United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

75-1150

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

Appellee,

-against-

STUART STEINBERG, WILLIAM CAPO, HOWARD KAYE, and JAMES PARKER,

Appellants.

On appeal from Judgment of the United States District Court for the Southern District of New York

Appendix

STANLEY L. SIEGEL
Attorney for Appellant Parker
401 Broadway — Suite 1808
New York, New York 10013
(212) 962-1295

HON. PAUL J. CURRAN
United States Attorney
Attorney for Appellee
United States Courthouse
Foley Square
New York, N.Y. 10007

DICK BAILEY SERVICE TEL. (212) 447-5358

UNITED STATES COURT OF APPEALS
FILED
MAY 19 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	Page
Criminal Docket Entries	A-L
Clerk's Certificate	A-1
Indictment 73 CR 1095	A-3
The Court's Charge	A-23
Government's Exhibits	A-88
Transcript of Sentencing	A-113

A

5-25-75

JUDGE WARD

73 CRIM. 1095

D. C. Form No. 100

CRIMINAL DOCKET

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	*For U. S.:*
STUART STEINBERG-1-4,7-12 & 14	John P. Cooney, Jr. AUSA
JOHN PERLMAN- 1	264-6348
JEFFREY PREISMAN-1,6	
WILLIAM CAPO-1-4,9 & 10	
MICHAEL DERST-1-4, 9 & 10	
SUSAN WEINBLATT-1,13,14	*For Defendant:*
STEPHEN EFFRON-1,11,12	
HOWARD KAYE-1,7	
STANLEY NICASTRO-1,8	
JAMES PARKER-1,5	
JANE DOE, a/k/a "Sam"-1,5	

ABSTRACT OF COSTS	AMOUNT	
(07)		
Fine,		
Clerk,		
Marshal, 5-6-7		
Attorney,		
Commissioner's Court, 21		
Witness 846,812,841(a)(1),(b)843(b)		
Consp. to viol. Fed. Narcotic Laws (Ct.1)		
Distr.& possess. w/incent to distr. Phencyclidine III(2-4)		
Use of telephone to facilitate consp. (Cts5-14)		
(Fourteen Counts)		

CASH RECEIVED AND DISBURSED

DATE	NAME	RECEIVED	DISBURSED

UNITED STATES COURT OF APPEALS FILED APR 24 1975 A. DANIEL FUSARO, CLERK SECOND CIRCUIT

5-11-75

10-9-75

DATE	PROCEEDINGS
-73	Filed indictment and ordered sealed. Bonsal,J.
	B/W ordered. Bonsal,J.
-23-75	Indictment ordered unsealed. Frankel,J.(Assigned to Judge Cooney as superseding 73Cr1048)
	Weinberg(atty. present) Produced in Court on B/W. Pleads not guilty. Motions returnable in 10 days. Bail fixed at $250,000. unsecured P.R.B. co-signed by father. Bail limits to Wash. D.C.-EDNY. Deft. to surrender passport to his atty. and call his atty. every Monday. released in the custody of his atty. to next Wed. to-day.
	[illegible] (atty. present) Produced in court on B/W. Pleads not guilty. [illegible] 10 days. Bail fixed at $75,000. unsecured P.R.B. [illegible]

B

DATE	PROCEEDINGS	CLERK'S FI	
		PLAINTIFF	DEFEND
2-28-74	Kaye(atty. present) Produced in Court on B/W.) Pleads not guilty. Bail fixed at $250,000. unsecured P.R.B. to be signed by his father and wife. Bail limits extended EDNY and Ft. Lee,N.J. Released to custody of atty. for today to post Bond. Ordered photo--graphed and fingerprinted. Deft. to call his atty. every Monday. Motions returnable in 10 days.		
	Parker (atty. present) Produced in Court on B/W) Pleads not guilty. Motions returnable in 10 days. Deft. remanded inlieu of bail fixed at $10,000. unsecured P.R.B. to be co-signed by sister and brother-in -law.		
	Weinblatt(Produced in court on B/W) Bail fixed at $35,000. unsecured P.R.B. unsecured to be signed by his father. Deft. released on his own recognizance to post Bond today. Pleading adjourned to 3/4/74. Brieant,J.		
2/28/74	Deft. Capo (Atty present) brought to court on b/w. Pleads not guilty. 10 days motion. Deft remanded in lieu of bail fixed at $7,500. ~~Deft. Ebron (attys present) brought to court on b/w. Pleads not guilty. 10 days for motions. Deft remanded in lieu of bail fixed at $20,000. unsecured P.R.B. co-signed by mother. Brieant,J.~~ ~~Defts. Nicastro (atty present) brought to court on b/w. Pleads not guil Bail fixed at $10,000. unsecured P.R.B. Deft. R.O.R. until he posts bond. 10 days for motions. Deft to be fingerprinted and photographed~~ ~~Deft. Russo (no atty present) Remandedwithout bail. Deft to appear bef Magistrate who will fix bail. Brieant,J.~~		
3/1/74	Deft Russo (atty present) pleads not guilty. 10 days for motions. Bail fixed at $20,000. P.R.B. secured by $2,000. to be co-signed by sister,father & mother. Condition of bail being deft reside with parents and call U.S. Atty every Monday & Friday. Mother & father to sign bond & post money by 5 PM Monday 3/4/74. Deft discharged fr custody of Marshal. Brieant,J.		
2/28/74	PARKER-filed P.R.B. in the sum of $10,000.		
2/28/74	FRIESMAN-filed P.R.B. in the sum of $25,000.		
2/28/74	STEINBERG-filed P.R.B. in the sum of $250,000.		
2/28/74	KAYE-filed P.R.B. in the sum of $250,000.		
2/28/74	WEINBLATT-filed P.R.B. in the sum of $35,000.		
3/1/74	NICASTRO-filed P.R.B. in the sum of $10,000.		
	-cont'd on next page-		

C

DATE	PROCEEDINGS	CLERK'S FEE PLAINTIFF	CLERK'S FEE DEFEND
2-28-74	Kaye(atty. present) Produced in Court on B/W.) Pleads not guilty. Bail fixed at $250,000. unsecured P.R.B. to be signed by his father and wife. Bail limits extended EDNY and Ft. Lee,N.J. Released to custody of atty. for today to post Bond. Ordered photo--graphed and fingerprinted. Deft. to call his atty. every Monday. Motions returnable in 10 days.		
	Parker (atty. present) Produced in Court on B/W) Pleads not guilty. Motions returnable in 10 days. Deft. remanded inlieu of bail fixed at $10,000. unsecured P.R.B. to be co-signed by sister and brother-in-law.		
	Weinblatt(Produced in court on B/W) Bail fixed at $35,000. unsecured P.R.B. unsecured to be signed by his father. Deft. released on his own recognizance to post Bond today. Pleading adjourned to 3/4/74. Brieant,J.		
2/28/74	Deft. Capo (Atty present) brought to court on b/w. Pleads not guilty. 10 days motion. Deft remanded in lieu of bail fixed at $7,500. ~~Deft. Effron (attys present) brought to court on b/w. Pleads not guilty. 10 days for motions. Deft remanded in lieu of bail fixed at $20,000. unsecured P.R.B. co-signed by mother. Brieant,J. Deft. Nicastro (atty present) brought to court on b/w. Pleads not guil. Bail fixed at $10,000. unsecured P.R.B. Deft. R.O.R. until he posts bond. 10 days for motions. Deft to be fingerprinted and photographed Deft. Burse (no atty present) Remanded without bail. Deft to appear bef Magistrate who will fix bail. Brieant,J.~~		
3/1/74	Deft. Burse (atty present) pleads not guilty. 10 days for motions. Bail fixed at $20,000. P.R.B. secured by $2,000. to be co-signed by sister,father & mother. Condition of bail being deft. reside with parents and call U.S. Atty every Monday & Friday. Mother & father to sign bond & post money by 5 PM Monday 3/4/74. Deft discharged fm custody of Marshal. Brieant,J.		
3/28/74	PARKER-filed P.R.B. in the sum of $10,000.		
3/20/74	FRIEDMAN-filed P.R.B. in the sum of $25,000.		
3/20/74	STEINBERG-filed P.R.B. in the sum of $250,000.		
3/20/74	KAYE-filed P.R.B. in the sum of $250,000.		
3/20/74	WEINBLATT-filed P.R.B. in the sum of $35,000.		
3/1/74	NICASTRO-filed P.R.B. in the sum of $10,000.		
	-cont'd on next page-		

DATE	PROCEEDINGS
/1/74	Deft Perlman (atty present) Bench warrant vacated. Pleads not guilty. Bail $25,000. unsecured PRB, co-signed by sister. 10 days for motions. Bricant,J.
/5/74	Steinberg (atty present) bail limits are extended to Wash D.C. for a period of 5 days with consent of the Govt. Tenney,J.
3/1/74	S. Effron- filed PRB in the sum of $20,000.
3/4/74	M. DURST-filed PRB in the sum of $10,000. (appearance bond)
3/4/74	M. Durst-filed certificate of posting of bail.
/6/74	S. Nicastro-filed affdvt of financial status.
3/7/74	S. STEINBERG-filed Govt's affdvt in opposition to deft's motions for bill of particulars,discovery & inspection,etc.
3/7/74	Filed ORDER that the bail limits of deft S. Effron be extended to include travel by the deft to San Juan Puerto Rico, for a period of approximately two weeks,etc. Tenney,J. mn
3/11/74	Filed deft S. Nicastro's motion for bill of particulars,etc.
3/11/74	Filed deft S. Nicastro's motion for discovery and inspection,etc.
3/11/74	Filed Govt's notice of readiness for trial.
3/15/74	Wm. Capo- filed remand dtd 2/28/74.
3/22/74	Stephen Effron- filed warrant for arrest of deft and marshal's return, deft produced on warrant. Remanded in lieu of bail Unsecured PRB $20,000. Bricant,J. 2/28/74.
3/26/74	Filed ORDER that the scope of the bail of the deft James Parker is hereby expanded to permit the deft. to travel to and remain in Miami Beach, Fla, from March 28 to 4/2/74.Motley,J.mn
3/27/74	Filed warrant for arrest of John Perlman and return, warrant vacated deft surrendered.
3/28/74	J. P. Perlman-filed CJA form 23 financial affdvt.
3/28/74	J.R. Perlman-filed CJA form 20 appointment of counsel James Benard 150 Bway,NYC 10038 233-0260. mn Goettel, Magistrat
3/29/74	Filed ORDER that the bail limits of deft Stuart Steinberg, are ext. to include the Southern and Eastern Dists of N.Y. and the Dist. of Columbia for the purpose of visiting his child from 3/29/74 to 3/31/74,etc. Tenney,J. mn
4/2/74	S. WERMAN- (atty present) Deft. brought to court on warrant Pleads not guilty. Bail $10,000 PRB unsecured Bail limits ext. to E.D.N.Y. and Newtonwille Machigan. Deft to be fingerprinted and photographed. Tenney,J.
4/2/74	S. WERMANOfiled PRB in the sum of$10,000.

D. C. 109 Criminal & Bankruptcy Continuation Sheet

E

DATE	PROCEEDINGS
4/10/74	
4/12/74	Filed ORDER that the bail conditions of deft Sara Suzanne Werman, are ext. for the period from 4/13/74 to 4/14/74 for the purpose of visiting the Brattleboro Retreat in Brattleboro, Vermont. Tenney,J. mn
4/10/74	S. Werman- filed remand dtd 4/2/74.
4/15/74	S. Nicastro-filed notice of appearance by atty Jerold Weissfeld, 160 B'way,NYC 10038 Ba 7-9826.
4/30/74	S. Werman (Jane Doe) filed warrant for arrest of deft. and marshal's ret. 4/2/74.
4/3/74	S. Werman- filed warrant for arrest of deft and marshal's ret. 2/28/74
3/2/74	Filed affdvt of Emanuel Crowman re: substitution of atty.
4/30/74	Filed ORDER that the bail conditions on deft S. Werman, limiting her travel, be ext. to temporary residence in the Institute for Living, 400 Washington St, Hartford, Conn for the purpose of long term psycho-therapy. Tenney,J.
5/3/74	JOHN PERLMAN-Filed magistrates orig. papers: (1) docket entry sheet (2) appearance bond.
5/3/74	Filed ORDER that the bail limits for deft H. Kayeare ext. to include Boston and Belmont, Massachusetts,etc. for psychiatric treatment deft may substitute a surety bond in the sum of $50,000. or the cash equivalent thereof for the $250,000. PRB filed herein on 2/28/74. Upon the filing of such surety bond or cash equivale the said PRB shall be of no further effect and the guarantors th or shall have no further liability thereunder. Tenney,J. mn
5/6/74	Filed Govt's notice of readiness for trial.
5/20/74	Filed pretrial motions of deft Howard Kaye.
5/20/74	Filed deft Howard Kaye's memo of law in support of pretrial motions.
5/28/74	Filed ORDER that the bail limits of deft S. Steinberg are ext. to include the Southern and Eastern Districts of New York and the District of Columbia for the purpose of visiting his child from 5/31/74 to 6/7/74 inc. Gurfein,J. mailed notice
6/7/74	Filed ORDER that the bail limits of deft S. [illegible] are extended to [illegible] Belmont, Massachusetts, etc. Conn.,J. mn

DATE	PROCEEDINGS
1-27-74	Filed Order that deft. Stuart Steinberg bail bond be & are ext. to include the Southern & Eastern Dists of New York & Kent Falls, Connecticut & vicinity from 8-22-74 to & including Sept.3,1974.- Tenney,J. (Consented to).
8-21-74	Deft.Howard Kaye. Filed warrant for arrest with marshals return- on 2-27-74.
8-21-74	Deft.Stuart Steinberg.Filed warrant for arrest with marshals return, on 2-27-74.
8-21-74	Deft. Jeffrey Priesman.Filed warrant for arrest with marshals return, on 2-27-74.
8-21-74	Deft.James Parker.Filed warrant for arrest with marshals return, on 2-27-74.
8-21-74	Deft.Michael Durst.Filed warrant for arrest with marshals return, on 2-28-74.
8-21-74	Deft.Stanley Nicastro.Filed warrant for arrest with marshals return, on 2-28-74.
9/23/74	Filed ORDER that the bail limits of deft Stuart Steinberg are extended to include the Southern and Eastern Districts of New York and the District of New Jersey,etc. Tenney,J. mn
10/3/74	Filed ORDER that the bail limits of deft. S. Steinberg are extended to include the Southern and Eastern Districts of New York and the District of Columbia during the period from 10/2/74 to and including 11/1/74 and that except for the provisions of the foregoing paragraph, the deft. shall abide by with all terms of his bail bond,etc. Tenney,J. mn
10/15/74	Filed ORDER that the bail conditions of deft. Herman Joe ext. to include travel to and from Newport, N.J. for the period from 10/18 to 10/20/74,etc. Tenney,J. mn
10/22/74	Filed ORDER that the Court ordered,applications and related documents previously sealed by my order under the miscellaneous docket number 73 Cr. Misc. 1 (# 39 97(05) , be unsealed and docketed as part of the record in this action. Tenney,J.
4/9/74	Govt.'s inventory. (previously filed under Misc. number)
10/22/74	Filed Order that the inventory required by Title 18, U.S. Code, Section 2518 (8)(d) is hereby postponed for 60 days,etc.dtd 11/2 73-Stewart,J. (previously filed under Misc. number)
10/22/74	Filed Order authorizing interception of wire communications,etc. and affdvt. Stewart,J. (previously filed under Misc. number)
10/22/74	Filed Order that the inventory requireddby T.18,U.S.Code,Sec 2518(8)(d is hereby postponed for an additional 60 days. dated 1/28/74. Stewart,J. (previously filed under Misc. number)

DATE	PROCEEDINGS
11/11/74	M. Durst & V. Capo--Filed papers originally filed with Magistrate [illegible] (1) Docket Entry Sheets (2) (2) Criminal Complaint, S.D.N.Y. (3) Indictment Warrant, S.D.N.Y. (4) Disposition Sheet (5) Appointments of Counsel (6) Notices of Appearance (2) (7) Appearance Bond(s) (2) (8) Temporary Commitment(s) (2)
11-25-74	STUART STEINBERG-Filed CONSENT ORDER extending deft's. bail limits to include the Southern & Eastern Districts of New York and Las Vegas, Nevada (District of Nevada) [illegible] Ward,J.
11-25-74	STUART STEINBERG-Filed CONSENT ORDER extending deft's. bail limits to include travel to and from Boston, Mass., Hartford, Conn., New York City and Woodstock Vermont for the period from 11-27-74 to 12-1-74.....Ward,J.
11-26-74	STANLEY NICASTRO-Filed affidavit & notice of motion of Jerold C. Weisfeld to be relieved as counsel for deft.,
12-6-74	STUART STEINBERG-Filed deft's. affidavit & notice of motion to suppress the contents of all intercepted communications & evidence derived therefrom, ret. 12-17-74.
12-6-74	STUART STEINBERG-Filed deft's. memorandum of law in support of motion to suppress.
12-16-74	SARA LEVIN-Filed deft's. affirmation & notice of motion for disclosure, suppression discovery & inspection
12-16-74	JAMES PALMER-Filed deft's. affirmation & notice of motion for a bill of particulars, discovery & inspection, and disclosure, ret. 4-9-74.
12-16-74	SUSAN WOLFLATT-Filed deft's. affirmation & notice of motion for severance, suppress and discovery & inspection. (received in Chambers 3-14-74).
12-16-74	Filed Govt's. memorandum in opposition to motions by defts. Herman, Mayo, Wolfblatt, Parker and Nicastro for discovery and bills of particulars.
12-16-74	[illegible] deft's. affid. in reply relative to deft's. motion to suppress wiretap evidence.
12-17-74	STUART STEINBERG-Filed Govt's. memorandum in opposition to deft's. motion to suppress wiretap evidence.
12-17-74	Filed transcript of record of proceedings dated 10-18-74.
12-17-74	Filed transcript of record of proceedings dated 10-22-74.
12-17-74	STUART STEINBERG-Filed ORDER (endorsed to) extending deft'n. bail limits to include the Southern & Eastern Districts of New York and North Miami Beach, Florida from 12-23-74 to and including 1-1-75, etc.....Ward,J.

Cont'd. on Page 97

H

D. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Judgment
12-18-74	HOWARD KAYE-Filed ORDER (consented to) extending deft's. bail limits, for the period from 1-3-75 to and including 1-21-75, to include the cities of Miami and Miami Beach, Florida, and the Southern and Eastern Districts of New York and Fort Lee, New Jersey. After 1-21-75, bail limits shall be as provided in the order of this Court dated 2-28-74.....Ward,J.	
12-19-74	Pre-trial conference held. Trial set for Jan.20,1975 at 10:00 A.M.....Ward,J.	
12-20-74	STANLEY MICASTRO-Filed MEMO ENDORSED on motion of Jerold C. Weisenfeld, dated 11-26-74. Motion granted. [illegible] Counsel is ordered and is granted leave to permit [illegible] for [illegible] to note. SO ORDERED.....Ward,J. (mailed notice)	
12-20-74	HOWARD KAYE-Filed MEMO ENDORSED on deft's. motion filed 5-28-74. Motion for an order pursuant to 18 U.S.C. Sec. 4244 withdrawn without prejudice. The remaining motions are denied except as consented to by the Government. The particulars and materials are to be furnished to deft's. attorneys by 5:00 P.M. on 12-27-74 except as otherwise agreed to in open court. SO ORDERED.....Ward,J. (mailed notic	
12-20-74	JAMES PARKER-Filed MEMO ENDORSED on deft's. motion filed 12-16-74. Motion denied except as consented to by the Govt. The particulars and materials are to be furnished to deft's. attorneys by 5:00 P.M. on 12-27-74. SO ORDERED.....Ward,J. (mailed notice)	
12-24-74	JAMES PARKER-Filed CONSENT ORDER extending deft's. bail limits, for the period from 12-23-74 to 12-30-74, to permit the deft. to travel to and remain in Miami,Florida.....Ward,J.	
12-24-74	HOWARD KAYE-Filed ORDER (consented to) that deft. be examined as to his mental competency by Dr. Gershon Goldin, the cost to be borne by the U.S.A. and a copy of the report to be provided to deft's. counsel.....Ward,J.	
12-27-74	JAMES PARKER-Filed Govt's. bill of particulars.	
12-27-74	[illegible] Govt's. bill of particulars.	
12-[illegible]	[illegible]	
12-27-74	SARA-SUZANNE WEIMAN-Filed Govt's. bill of particulars.	
12-30-74	Deft. [illegible] with attorney [illegible] present withdraws plea of [illegible] guilty & pleads guilty to Count [illegible]. Pre-sentence investigation ordered. Sentence date 2-10-75 at 2:15 P.M. Bail of $35,000 P.R.B. continued. R.O.R.....Ward,J.	
12-30-74	Deft. Micastro with attorney Louis R. Rosenblatt present withdraws plea of not guilty & pleads guilty to Count 8. Pre-sentence investigation ordered. Sentence date 2-10-75 at 2:15 P.M. Bail of $10,000 unsecured P.R.B. Continued. R.O.R. .....Ward,J.	
12-30-74	STUART STEINBERG-Filed MEMO ENDORSED on deft's. motion filed 12-6-74. Motion denied in accordance with memorandum decision filed herewith.....Ward,J.(mailed Notic	
12-30-74	SARA-SUZANNE WEIMAN-Filed deft's. memorandum of law in support of pre-trial motion for discovery.	

-over-

DATE	PROCEEDINGS	Date Judgm
12-30-74	SARA-SUZANNE WERMAN-Filed MEMO ENDORSED on deft's. motion filed 12-16-74. A. suppression hearing is granted. In all other respects the motion is denied except as consented to by the government. SO ORDERED.....Ward,J. (mailed notice)	
12-30-74	STUART STEINBERG-Filed MEMORANDUM ORDER. Deft. Steinberg's motion, joined by [illegible] Feinman, Pilcon, Kaye & Fuchs to suppress the contents of all intercepted conversations and evidence derived therefrom is in all respects Denied. SO ORDERED.....Ward,J. (mailed notice)	
12-30-74	[illegible] on deft's. motion filed 12-16-74. [illegible]	
12-30-74	STANLEY MICASTRO-Filed MEMO ENDORSED on deft's. motion filed 3-11-74. Motion withdrawn.....Ward,J.	
12-30-74	STANLEY MICASTRO-Filed MEMO ENDORSED on deft's. motion for discovery & inspection filed 3-11-74. Motion withdrawn.....Ward,J.	
1-15-75	SARA-SUZANNE WERMAN-Filed 2nd MEMO ENDORSED on deft's. motion filed 12-16-74, Motion to suppress granted in accordance with oral decision rendered this date. SO ORDERED.....Ward,J.	
1-17-75	STUART STEINBERG-Filed deft's. notice of motion to dismiss Counts 1,7 thru 12 & 14 of the indictment, ret. 1-20-75.	
1-17-75	STUART STEINBERG-Filed deft's. memorandum of law in support of motion to dismiss.	
1-17-75	RICHARD KUH-Filed deft's. proposed examination of prospective jurors.	
1-16-75	STANLEY MICASTRO-Filed CJA Form 20 Copy 2 approving payment to Jacob Weisenfeld, [illegible] 1-27-75.....Ward,J.	
1-17-75	STUART STEINBERG-Filed deft's. notice of motion to dismiss Counts 1, 7 through 12, and 14 of the indictment ret. 1-20-75.	
1-17-75	STUART STEINBERG-Filed deft's. memorandum of law in support of motion to dismiss Counts 1, 7 through 12 and 14 of the indictment.	
1-20-75	STUART STEINBERG-Filed deft's. supplemental memorandum of law in support of motion to dismiss.	
1-20-75	STUART STEINBERG-Filed MEMO ENDORSED on deft's. motion to dismiss, ret. 1-20-75. [illegible] motion denied in accordance with oral decision rendered on this date. It is so ordered.....Ward,J.	
1-13-75	[illegible] (atty present) withdrawn plea of not guilty & pleads guilty to ct. 6. [illegible] ordered. Sentence date 2-10-75 at 2:30 p.m. Bail of $75,000. unsecured [illegible] co-signed by his mother cont'd.....Ward, J.	
1-16-75	[illegible] (atty present) withdrawn plea of not guilty & pleads guilty to ct.1. [illegible] ordered. Sentence date 2-10-75. Bail Cont'd.....Ward, J.	
1-9-75	[illegible] (atty present) withdrawn plea of not guilty & pleads guilty to ct. 1. [illegible] ordered. Sentence date 2-11-75 at 2:15 p.m. Bail $20,000. unsecured [illegible] Ward,J.	

Cont'd page 39.

73 Cr. 1095

J

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS
1-20-75	Trial severed as to Vernon. Bail limits extended to Conn.
1-20-75	Trial begins as to defts. Steinberg, Cape, Kaye and Parker.
1-20-75	JAMES PARKER-Filed deft's requested voir dire questions of prospective jurors.
1-20-75	STUART STEINBERG-Filed deft's questions to be asked of prospective jurors.
1-24-75	HOWARD KAYE-Filed Govt's. memorandum of law with respect to deft's. psychiatric defense.
1-21-75	Trial continues.
1-22-75	Trial continues.
1-23-75	Trial continues.
1-24-75	Trial continues.
1-27-75	Trial continues.
1-28-75	Trial continues.
1-29-75	Trial concluded. Jury deliberating. Deft. Steinberg-verdict guilty as charged. Bail continued. Pre-sentence investigation ordered. Sentence date 3-25-75 at 2:30 P.M. Deft. Cape-verdict guilty as charged. Pre-sentence investigation ordered. Sentence date 2-18-75 at 2:00 P.M. Bail ended. Deft. Kaye-verdict guilty as charged. Pre-sentence investigation ordered. Sentence date 3-18-75 at 2:30 P.M. Bail continued. Deft. Parker-verdict guilty as charged. Pre-sentence investigation ordered. Sentence date 3-18-75 at 2:45 P.M. Bail continued. ....Ward,J.
1-30-75	JAMES PARKER-Filed deft's. request to charge.
1-30-75	HOWARD KAYE-Filed deft's. request to charge.
1-30-75	STUART STEINBERG-Filed deft's. requests to charge.
1-30-75	STUART STEINBERG-Filed deft's. supplemental request to charge.
1-30-75	Filed Govt's. request to charge.
1-30-75	Filed deft's. supplemental requests to charge.
1-30-75	HOWARD KAYE-Filed deft's. memorandum in support of motion for a judgment of acquittal pursuant to Rule 29, F.R.Cr.P.
2-18-75	JAMES PARKER-Filed deft's. affirmation & notice of motion for a Judgment of Acquittal setting aside the verdict of the jury or alternatively for a new trial.
2-18-75	JAMES PARKER-Filed deft's. memorandum of law in support of motion for Judgment of Acquittal.
2-18-75	SUSAN WEINBLATT-Filed JUDGMENT & ORDER OF PROBATION (atty present) Imposition of prison sentence is suspended. Deft. is placed on probation for a period of TWO (2) YEARS, subject to the standing probation order of this Court. Counts 1 and 14 are dismissed on motion of deft's. counsel with consent of the Government. .....Ward,J. Issued copies 2-18-75.

-over-

DATE	PROCEEDINGS	Date O. idgmen
2-18-75	STANLEY NICASTRO-Filed JUDGMENT & ORDER OF PROBATION (atty present) Imposition of prison sentence is suspended. Deft. is placed on probation for a period of TWO (2) YEARS, subject to the standing probation order of this court. Count 1 is dismissed on motion of deft's. counsel with consent of the Government.....Ward,J. Issued copies 2-18-75.	
2-19-75	Filed transcript of record of proceedings dated December 19, 1974.	
2-24-75	Filed transcript of record of proceedings dated January 20,21,22,23,24,27,28,29,1975.	
2-25-75	Filed transcript of record of proceedings dated January 17, 1975.	
2-28-75	STUART STEINBERG-Filed affidavit & ORDER that deft's. bail limits are extended to include the Southern & Eastern Districts of N.Y. & the District of Columbia for the purpose of visiting his child from 3-2-75 to and including 3-4-75.....Ward,J.	
3-11-75	EDWARD KAYE-Filed deft's. pre-sentencing memorandum.	
3-11-75	ANNE ERDMAN Filed Judgment & Order of Probation. (Atty. Present) Imposition of prison sentence on count 1 is suspended. The deft. is placed on probation for a period of two (2) years on condition deft. performs voluntary work on a regular basis to be arranged by the probation dept., subject to the standing probation order of this court. Deft. is fined $1,000.00 on count 1. Total fine $1,000.00 is to be paid during deft's period of probation in such sums, and at such times as may determined by the probation officer. Ward J. Issued Commitment 3-12-75	
3-11-75	JEWERY PRESCHUM Filed Judgment & Order of Probation. (Atty. Present) Imposition of prison sentence on count 6 is suspended. The deft. is placed on probation for a period of two (2) years on condition deft. performs voluntary work on a regular basis to be arranged by the probation dept., subject to the standing probation order of this court. Deft. is fined $1,000.00 on count 6 Total fine $1,000.00 is to be paid during deft's period of probation in such sums & at such times as may be determined by the probation officer. Count [illegible] Ward J. Issued Commitment 3-12-75	
3-13-75	JAMES PARKER-Filed Govt's. memorandum in opposition to deft's. motions to dismiss and for a new trial.	
3-13-75	Filed transcript of record of proceedings dated January 14,15, 1975.	
3-13-75	JAMES [illegible]R-Filed ORD) ENDORSED on deft's. motion for a judgment of acquittal or for a new trial, filed 2-19-75 Motion denied in accordance with the oral decision of the Court. SO ORDERED.....Ward,J.	
3-17-75	WILLIAM [illegible]-Filed ORDER that Criminal Justice Attorneys, Federal Defender Services Unit, Legal Aid Society, 15 Park Row, 10th Floor N.Y.C. 10038 (374-1711) as attorneys for deft.....Ward,J.	

(Cont'nued)

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Dft'l Jnls.
3-13-75	WILLIAM CAPO - Filed Judgment & Commitment (Atty. Present) The dft. is hereby committed to the custody of the Atty. Gen. or his authorized representative pursuant to Sec. 4208(b) of T.18,U.S.C. for study,report & recommendation. This commitment deemed to be for the maximum sentence prescribed by law to wit:Five (5) Years each on cts. 1,2,3 & 4 to be followed by a Special Parole of Two (2) Years on each count, Four (4) Years each on counts 9 & 10. Sentences on counts 2,3,4,9 & 10 are to run concurrently with sentence on count 1, unless altered pursuant to said Section upon the receipt & recommendation as prescribed in 4208(c) of T.18 U.S.C. The results of such study together with any recommendation which the Director of the Bureau of Prisons believes would be helpful in determining the disposition of this case, shall be furnished to the court within three(3) Months. Special inquiry be made to ascertain basis for dft's seizures & also fully evaluate the psychological condition of said deft. Deft, to be given credit for time already served. Dft. has right to appeal in forma pauperis. Ward J. Issued Commitment 3-19-75	
3-18-75	JAMES PARKER - Filed Judgment & Order of Probation (Atty. Present) Imposition of prison sentence suspended on counts 1 & 5. Dft. is placed on probation for a period of Two (2) Years on each of counts 1 & 5 on condition that dft. perform voluntary work on a regular basis to be arranged by probation dept., subject to the standing probation order of this court. Probation on counts 1 and 5 to run concurrently. Ward J. Issued copies 3-19-75	
3-18-75	WILLIAM CAPO-Filed deft's. notice of appeal from the final judgment entered on 3-13-75 and MEMO ENDORSED. Leave to appeal in forma pauperis is granted. SO ORDERED.....Ward,J. (mailed copies to William Capo, 427 West Street, N.Y.C. 10014 and U.S. Attorney's Office.).	
3-18-75	HOWARD KAYE- Filed Judgment & Commitment [illegible] (Atty. Present) The Dft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of Two (2) Months on count 1 to be followed by a Special Parole period of Three (3) Years & a fine of $5,000.00;Two (2) Months on count 7 and a fine of $5,000.00. Sentence & fine on count 7 to run concurrently with count 1. TOTAL FINE $5,000.00. The dft. is ordered to stand [illegible] by reporting to Allenwood Prison Camp, Montgomery,Pennsylvania, on the date which shall be fixed by the Bureau of Prisons. The Dft. shall be given at least five day's notice of this date. Ward J. Commitment Issued 3-20-75	
3-20-75	HOWARD KAYE-Filed deft'a. notice of appeal from the judgment of conviction entered on 3-18-75. Mailed notice to Howard Kaye, 10 South Ridge Road, Larchmont, New York 10538 and U.S. Attorney's Office.	
3-25-75	JAMES PARKER-Filed deft'a. notice of appeal from the judgment of conviction rendered on 3-18-75. (Copies mailed to James Parker, c/o Siegel & Graber, Esqs. 401 B'way, Suite 1808, N.Y.C. 10013 and U.S. Attorney's Office.).	

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By C E Thompson
Deputy Clerk

A1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA

-against-

WILLIAM CAPO, et al.,

CASE NO. 73 CR. 1095

JUDGE WARD

CLERK'S CERTIFICATE.

I, RAYMOND F. BURGHARDT, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the certified copy of docket entries lettered A- L, and the original filed papers numbered 1 thru 102, inclusive, constitute the record on appeal in the above entitled proceeding; except for the following missing documents:

DATE FILED	BRIEF DESCRIPTION
5-6-74	U.S.A. - Notice of readiness for trial
6/26/74	Durst - C.J.A. - approval for payment
12-6-74	Steinberg - Memo. of Law
12-16-74	Werman - Motion for disclosure, etc.
12-16-74	U.S.A. - Memo.
12-17-74	U.S.A. affidavit
1-17-75	Kaye - Proposed examination of jurors
1-16-74	Nicastro - C.J.A. approval for payment

IN TESTIMONY WHEREOF I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 8th day of April, in the year of our Lord, One thousand nine hundred and seventy-five, and of the Independence of the United States the 199th year.

Raymond F Burghardt
Clerk of the Court.

UNITED STATES COURT OF APPEALS
FILED
APR 14 1975
A. DANIEL FUSARO, CLERK

A2

MISSING DOCUMENTS

DATE FILED	BRIEF DESCRIPTION
1-30-75	Steinberg - Requests to charge
2-18-75	Parker - Memo. of law
3-11-75	Kaye - Pre-sentencing memo.
3-13-75	Parker - U.S.A. memo.

A3

JPC,Jr.:art

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

-v- 73 CRIM. 1095

STUART STEINBERG, :
JOHN PERLMAN, :
JEFFREY PRIESMAN, :
WILLIAM CAPO, :
MICHAEL DURST, : INDICTMENT
SUSAN WEINBLATT, : 73 Cr.
STEPHEN EFFRON, :
HOWARD KAYE, :
STANLEY NICASTRO, :
JAMES PARKER and :
JANE DOE, a/k/a "Sam", :

Defendants. :

----------x

The Grand Jury charges:

1. From on or about the 1st day of June, 1972, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, STUART STEINBERG, JOHN PERLMAN, JEFFREY PRIESMAN, WILLIAM CAPO, MICHAEL DURST, SUSAN WEINBLATT, STEPHEN EFFRON, HOWARD KAYE, STANLEY NICASTRO, JAMES PARKER and JANE DOE, a/k/a "Sam", the defendants and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1), 841(b)(1)(B) and 843(b) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic

JPC,Jr.:art

drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

3. It was further part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule III controlled substances, the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(B) of Title 21, United States Code.

4. It was further part of said conspiracy that the defendants would unlawfully, wilfully and knowingly use a communication facility, to wit, the telephone, in committing and in causing and facilitating the commission of the conspiracy.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about June 27, 1973, defendant WILLIAM CAPO delivered a package containing phencyclidine to defendant STUART STEINBERG, in the vicinity of 135 E. 35th Street, New York, New York.

2. On or about July 10, 1973, defendant STUART STEINBERG delivered a package containing phencyclidine, in the vicinity of 135 East 35th Street, New York, New York.

3. On or about July 10, 1973, defendant MICHAEL DURST went to 135 East 35th Street, New York, New York.

JPC,Jr.:art

4. On or about July 17, 1973, defendant STUART STEINBERG discussed the sale of ten pounds of phsycyclidine for $136,000.00.

5. On or about July 23, 1973, defendant JEFFREY FRIESMAN had a telephone conversation.

6. On or about July 26, 1973, defendants HOWARD KAYE and STUART STEINBERG discussed the sale of fifty pounds of either cocaine or phencyclidine for $680,000.00.

7. On or about July 26, 1973, defendants STANLEY NICASTRO and STUART STEINBERG had a telephone conversation.

8. On or about July 26, 1973, defendants JAMES PARKER and JANE DOE, a/k/a "Sam" had a telephone conversation.

9. On or about August 26, 1973, defendants SUSAN WEINBLATT and STUART STEINBERG discussed the sale of ten pounds of hashish.

10. On or about August 8, 1973, defendant STEPHEN EFFRON offered to sell three pounds of cocaine to defendant STUART STEINBERG.

11. On or about August 28, 1973, defendant JOHN PERLMAN discussed the sale of fifty pounds of phencyclidine.

(Title 21, United States Code, Section 846.)

SECOND COUNT

The Grand Jury further charges:

On or about the 26th day of June, 1973, in the Southern District of New York, STUART STEINBERG, WILLIAM CAPO, and MICHAEL BURST, the defendants, unlawfully, intentionally and knowingly did

distribute and possess with intent to distribute a Schedule III controlled substance, to wit, approximately .21 grams of phencyclidine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B).)

THIRD COUNT

The Grand Jury further charges:

On or about the 27th day of June, 1973, in the Southern District of New York, STUART STEINBERG, WILLIAM CAPO and MICHAEL DURST, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule III controlled substance, to wit, approximately 50.43 grams of phencyclidine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B).)

FOURTH COUNT

The Grand Jury further charges:

On or about the 10th day of July, 1973, in the Southern District of New York, STUART STEINBERG, WILLIAM CAPO and MICHAEL DURST, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule III controlled substance, to wit, approximately 222.3 grams of phencyclidine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B).)

JPC,Jr.:art

FIFTH COUNT

The Grand Jury further charges:

On or about the 26th day of July, 1973, in the Southern District of New York, JAMES PARKER and JANE DOE, a/k/a "Sam", the defendants, did unlawfully, wilfully and knowingly use a communication facility, to wit, the telephone in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)

SIXTH COUNT

The Grand Jury further charges:

On or about the 23rd day of July, 1973, in the Southern District of New York, JEFFREY FRIESMAN, the defendant, did unlawfully, wilfully and knowingly use a communication facility, to wit, the telephone, in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)

SEVENTH COUNT

The Grand Jury further charges:

On or about the 26th day of July, 1973, in the Southern District of New York, STUART STEINBERG and HOWARD KAYE, the defendants, did unlawfully, wilfully and knowingly use a communication facility, to wit, the

JPC:nc telephone in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)

COUNT EIGHT

The Grand Jury further charges:

On or about the 26th day of July, 1973, in the Southern District of New York, STANLEY NICASTRO and STUART STEINBERG, the defendants, did unlawfully, wilfully, and knowingly use a communication facility, to wit, the telephone, in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).

COUNT NINE

The Grand Jury further charges:

On or about the 31st day of July, 1973, in the Southern District of New York, WILLIAM CAPO, MICHAEL DURST, and STUART STEINBERG, the defendants, did unlawfully, wilfully and knowingly use a communication facility, to wit, the telephone, in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)

COUNT TEN

The Grand Jury further charges:

On or about the 6th day of August, 1973, in the Southern District of New York, WILLIAM CAPO, MICHAEL DURST, and STUART STEINBERG, the defendants, did unlawfully, wilfully and knowingly use a communication facility to wit, the telephone, in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)

JPC:bjt

COUNT ELEVEN

The Grand Jury further charges:

On or about the 6th day of August, 1973, in the Southern District of New York, STUART STEINBERG and STEPHEN EFFRON, the defendants, did unlawfully, wilfully and knowingly use a communication facility, to wit, the telephone, in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)

COUNT TWELVE

The Grand Jury further charges:

On or about the 8th day of August, 1973, in the Southern District of New York, STUART STEINBERG and STEPHEN EFFRON, the defendants, did unlawfully, wilfully, and knowingly use a communication facility, to wit, the telephone, in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)

COUNT THIRTEEN

The Grand Jury further charges:

On or about the 2nd day of August, 1973, in the Southern District of New York, SUSAN WEINBLATT, the defendant, did unlawfully, wilfully and knowingly use a communication facility, to wit, the telephone in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)

A10-A22

C:bjt

COUNT FOURTEEN

The Grand Jury further charges:

On or about the 8th day of August, 1973, in the Southern District of New York, SUSAN WEINBLATT, and STUART STEINBERG, the defendants, did unlawfully, wilfully and knowingly use a communication facility, to wit, the telephone, in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)

FOREMAN

PAUL J. CURRAN
United States Attorney for the
Southern District of New York

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By
Deputy Clerk

UNITED STATES OF AMERICA

versus 73 Crim 1095

STUART STEINBERG et al.,

Defendants

New York, N. Y.

January 29, 1975 - 9:30 a.m.

CHARGE OF THE COURT

THE COURT: (Ward, D. J.) It is the custom in this Court for the juror seated in the first seat to serve as the foreman or forelady of the jury. In this case, your foreman will be Mr. John Gutierrez.

Mr. Foreman, ladies and gentlemen:

We come now to that stage of the case where you and I do our part in the administration of justice in this case.

You are the sole and exclusive judges of the facts. It is your function to pass upon the weight of the evidence; you determine the credibility of the witnesses; you resolve such conflicts as there may be in the evidence; and you draw such reasonable inferences as may be warranted by the testimony elicited on direct and cross-examination and the exhibits in the case.

My function is to instruct you as to the law applicable to the case. It is your duty to accept the law

SLP 2

as I give it to you in these instructions and to apply it to the facts as you find them.

With respect to any fact matter, it is your recollection and yours alone that governs. Anything that counsel, either for the Government or the defendants, may have said in respect to matters in evidence or as to any factual matter, whether stated in a question, in argument or in summation, is not to be substituted for your own independent recollection.

So, too, anything I may have said during the trial or may refer to during the course of these instructions as to any matter in evidence or as to any factual matter is not to be taken in lieu of your own recollection.

To repeat, it is your recollection, individually and collectively, which governs.

From time to time, conferences at the bench were conducted during the trial at the request of the attorneys or at my request. These conferences were solely on questions of law or logistics and are of no conern to you. You are not to draw any interence for or against either side because of a request for such conferences.

After you have retired to the jury room to deliberate, should you require assistance with regard to testimony or the law as I give it to you in this charge, you may request that any portion of the testimony, including any portion of the

tapes or any portion of my charge be read back to you. You will then be brought into the courtroom, and the portion of the testimony or the portion of the charge which you request will be read to you.

In the same vein, should you wish to see the indictment or any exhibit which is in evidence, you may call for the indictment or the exhibit, and it will be sent into the jury room for you to see.

Each of the defendants has pleaded not guilty. Therefore, the Government has the burden of proving the charges against them beyond a reasonable doubt. It is a burden that never shifts and remains upon the Government throughout the entire trial.

A defendant does not have to prove his innocence. He need not present any evidence, and he need not testify on his own behalf. On the contrary, he is presumed to be innocent of the charges contained in the indictment. The presumption of innocence was in his favor at the start of the trial and continues in his favor throughout the trial. It is removed if and when you are satisfied that the Government has sustained its burden of proving the guilt of a particular defendant on a particular charge beyond a reasonable doubt.

You will, as I will tell you later, consider each defendant separately and each charge separately.

As I told you when you were being selected, an indictment is not evidence. It is a technique or method or procedure by which persons accused by a grand jury of crimes are brought into court and then their guilt or innocence is determined by a trial jury such as you are.

An indictment has no evidentiary value. An indictment does not constitute proof or evidence. It is merely an accusation.

The indictment in this case contains fourteen counts. Twelve of these counts will be presented to you for consideration. Each of these counts charges a separate offense or crime. Each must be considered separately.

The indictment names eleven defendants. However, only four -- Stuart Steinberg, William Capo, Howard Kaye and James Parker -- are on trial before you. These are the only persons whose guilt or innocence you must announce in your verdict, although, as I will explain to you shortly, in considering their guilt or innocence you may have to determine the nature of the participation, if any, of the other persons named in the indictment.

In the determination of innocence or guilt, you must bear in mind that guilt is personal. The guilt or innocence of each defendant on trial before you must be determined separately with respect to him, solely on the evidence

presented against him or the lack of evidence.

The case relative to each defendant stands upon the proof of the charge against him and not against somebody else. You will consider Stuart Steinberg separately; you will consider William Capo separately; you will consider Howard Kaye separately, and you will consider James Parker separately.

The charges in this indictment refer to the violation of Federal law, specifically Sections 812, 841, 843 and 846 of Title 21 of the United States Code.

In pertinent part, Section 841 provides:

"It shall be unlawful for any person knowingly and intentionally to distribute or possess with intent to distribute a controlled substance."

Section 812 sets forth and defines "controlled substances" in various schedules.

Section 846 makes it a crime to conspire to commit certain offenses, including the offense which I have defined a moment or two ago in Section 841.

Section 843 makes it a crime for anyone knowingly and intentionally to use any communication facility in committing or causing or facilitating the commission of any act or acts in violation of the laws to which I made reference a moment or two ago.

Turning now to the indictment, Count 1 reads as

follows:

"The grand jury charges:

"1. From on or about the 1st day of June 1972 and continuously thereafter, up to and including the date of the filing of this indictment" -- which I state to you was December 5, 1973 -- "in the Southern District of New York, Stuart Steinberg, John Perlman, Jeffrey Priesman, William Capo, Michael Durst, Susan Weinblatt, Stephen Effron, Howard Kaye, Stanley Nicastro, James Parker and Jane Doe, a/k/a 'Sam', the defendants, and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(B) of Title 21, United States Code.

"2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown, in violation Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

"3. It was further part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule III controlled substances, the exact amount thereof being to

the grand jury unknown, in violation of Sections 812, 841(a)(1) and 841(b)(1)(B) of Title 21, United States Code.

"OVERT ACTS

"In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:"

There follow eleven stated or alleged overt acts, which I will return to later in my charge; and, finally, at the bottom of the count, we have "(Title 21, United States Code, Section 846.)"

Following the conspiracy charged in Count 1, there are additional charges, which are called substantive counts. The conspiracy charge in Count 1 is entirely separate and distinct from the charges made in the substantive counts. This fact, however, does not prevent you from considering proof of actual violations as evidence that a conspiracy existed.

However, before you may convict any of the defendants under Count 1, all of the following essential elements must be established by the Government beyond a reasonable doubt:

First: you must be satisfied that the conspiracy charged did in fact exist; that is, that there was an agreement to deal in controlled substances and narcotic drug controlle substances, at or about the time alleged. Although the

indictment alleges a period from on or about the first day of June 1972 and up to and including the date of the filing of the indictment, which I told you was December 5, 1973, I think you will recall that the proof covered the period between June and September of 1973.

Second: that a particular defendant -- as I say, you must consider each defendant separately -- that a particular defendant knowingly and wilfully associated himself with the conspiracy; and

Third: that at least one of the overt acts set forth in the indictment did take place and that at least one of the overt acts took place in the Southern District of New York, which includes the Borough of Manhattan, in which this courthouse is located.

What is a conspiracy?

A conspiracy is a combination or agreement of two or more persons by concerted action to accomplish a criminal or unlawful purpose or some purpose not in itself criminal or unlawful by criminal or unlawful means.

The gist of the crime of conspiracy is the unlawful combination or agreement to violate the law. Whether or not the defendants accomplished what is alleged they conspired to do is immaterial to the question of guilt or innocence.

A conspiracy has sometimes been called a partnership

in criminal purposes, in which every member becomes the agent of every other member. However, to establish a conspiracy, the Government is not required to show that two or more persons sat around a table and entered into a solemn contract, orally or in writing, stating that they have formed a conspiracy to violate the law, setting forth details of the plan, the means by which the unlawful project is to be carried out or the part to be played by each conspirator.

Indeed, it would be extraordinary if there were such a formal document or specific oral agreement. Your common sense will tell you that when men in fact undertake to enter into a criminal conspiracy, much is left to unexpressed understanding. Conspirators do not usually reduce their agreements to writing or acknowledge them before a Notary Public, nor do they publicly broadcast their plans.

From its very nature, a conspiracy is almost always characterized by secrecy, thereby rendering detection difficult.

Thus, it is sufficient if two or more persons in any manner, through any contrivance, impliedly or tacitly, come to a common understanding to violate the law. Express language or specific words are not required to indicate assent or attachment to a conspiracy.

Let me emphasize to you that it is not required that you find all eleven of the co-conspirators alleged in the

indictment were in fact members of the conspiracy in order to find that a conspiracy existed. You need only find that two or more persons, including any of these four defendants, entered into an unlawful agreement in order to find that a conspiracy existed.

In determining whether or not there has been an unlawful agreement, you may judge acts and conduct of the alleged members of the conspiracy which are done to carry out an apparent criminal purpose. The adage "Actions speak louder than words" is applicable here. Usually, the only evidence available is that of disconnected acts on the part of the alleged individual conspirators, which acts, however, when taken together in connection with each other and with the reasonable inferences flowing therefrom show a conspiracy or agreement to secure a particular result as satisfactorily and conclusively as more direct proof.

If, upon such consideration of all the evidence, direct or circumstantial -- and I shall define those two terms later in my charge -- you find beyond a reasonable doubt that the minds of alleged conspirators, or at least two of them, met in an understanding way and that they agreed, as I have explained a conspiratorial agreement to you, to work together in furtherance of the unlawful scheme alleged in the indictment, then the proof of the existence of the conspiracy is

established.

You have heard testimony that Bryan Noone and Arthur Anderson were acting as agents, and Ricky Citrola was an informant for the Drug Enforcement Administration, an agency of the United States Government, in their dealings with Mr. Steinberg and other alleged co-conspirators.

In determining whether Steinberg "conspired", as that term may be defined, you may not consider any agreements or understandings that Steinberg had, if any, with Noone, Anderson or Citrola. You must find beyond a reasonable doubt that Steinberg and the alleged co-conspirators conspired among themselves, separate and apart from any agreement Steinberg or anyone else may have had with Noone, Anderson or Citrola.

Accordingly, evidence, even if believed, that Steinberg agreed with Noone, Anderson or Citrola to distribute or possess with intent to distribute a substance is not proof that Steinberg conspired as charged in Count 1.

There must be proof beyond a reasonable doubt that Steinberg agreed with the alleged co-conspirators as distinguished from any agreement between Steinberg and Noone, Anderson or Citrola to distribute or possess with intent to distribute controlled substances and narcotic drug controlled substances.

It is not necessary for the Government to prove the

success of the conspiracy in order to establish a violation of a conspiracy statute. As a conspiracy is basically an agreement to violate the law, it may exist even though you find the objectives were never accomplished.

The indictment charges several illegal objects or goals of the conspiracy. These illegal objects were the sale of Schedule I controlled substances, in this case hashish and hashish oil; the sale of Schedule II narcotic drug controlled substances, in this case cocaine; and the sale of Schedule III controlled substances, in this case PCP, Seconal and Tuinal.

It is not necessary that the Government prove that these defendants agreed to distribute all of those substances. It is sufficient for the purpose of establishing whether or not a conspiracy as charged in the indictment existed if you find beyond a reasonable doubt an agreement between two or more persons, including any of these four defendants, to distribute any of those substances.

I caution you that the indictment charges, and the Government must prove, the existence of one conspiracy, not more, but I instruct you that a single conspiracy may have more than one illegal purpose, and a defendant need not participate in all of the illegal purposes of a conspiracy in order to be found guilty, so long as he is found by you to be a member of the single conspiracy charged in the indictment and

not of some other conspiracy.

On the other hand, if you find that the Government failed to establish beyond a reasonable doubt the one overall agreement as charged among the defendant you are considering and the alleged co-conspirators, you must acquit that defendant of the conspiracy charge.

Similarly, if you find that the Government failed to show the existence of the one overall agreement charged beyond a reasonable doubt but, rather, a number of separate agreements among the alleged co-conspirators, then you must acquit the defendants of the conspiracy charge.

Once satisfied that the conspiracy charged existed and that, in fact, it was a single conspiracy, you must ask yourself who its members were.

In deciding whether or not a defendant was a member of a conspiracy, you must do so on the basis of that defendant's own statements, acts and conduct.

In determining whether a defendant became a member of the conspiracy, you must determine not only whether or not the particular defendant participated in the conspiracy but whether he did so with knowledge of its unlawful purpose. Did he join with awareness of at least some of the basic aims and purposes of the conspiracy?

The word "knowingly" as defined in the crimes

charged here means that the particular act was done voluntarily and purposely and not because of mistake or accident.

Knowledge may be proven by a defendant's conduct and by all the facts and circumstances surrounding the case. No person can intentionally avoid knowledge by closing his eyes to facts which should prompt him to investigate.

In determining whether a defendant acted knowingly and intentionally, it is relevant for you to consider his mental and physical condition during the period of time he is alleged to have committed the acts charged. If you find that a defendant was under the influence of drugs at the time of any acts or during any conversation, either in person or by telephone, you would be justified in concluding that there was a reasonable doubt as to whether the defendant acted or spoke intentionally, at least on that occasion.

The word "wilfully" is used in the crimes charged here and means that the act was committed by a defendant voluntarily, with knowledge that it was prohibited by law and with the purpose of violating the law and not by accident, mistake or in good faith.

Knowledge is a matter of inference from facts proved. It is not necessary that the particular defendant you are considering be fully informed as to the details of the scope of the conspiracy in order to justify any inference

of knowledge on his part. To have guilty knowledge, the defendant need not know the full extent of the conspiracy and all of its activities and actors.

Once you have found a conspiracy to have existed and a defendant to have knowingly participated in it, the extent of his individual participation has no bearing on his guilt or innocence. The guilt of a conspirator is not measured by the extent or the duration of his participation. Even if he participated in it to a degree more limited than that of his co-conspirators, an individual defendant is equally culpable so long as he was, in fact, a conspirator.

However, participation in a single isolated transaction is not sufficient to show membership in a continuing conspiracy.

I want to caution you that mere innocent association with one or more of the conspirators does not make one a member of the conspiracy; nor is knowledge without participation sufficient. What is necessary is that a defendant participate with knowledge of at least some of the purposes of the conspiracy and with intent to aid in the accomplishment of those unlawful ends.

When people enter into a conspiracy to accomplish an unlawful end, they become agents for one another in carrying out the conspiracy. Hence, the acts or declarations of one in

the course of the conspiracy and in furtherance of the common purpose are deemed to be the acts of all, and all are responsible for such acts.

Accordingly, if you find in accordance with these instructions that the alleged conspiracy existed and that some or all of the defendants participated in it, then acts done and statements and declarations made in furtherance of the conspiracy by the persons found by you to have been members of the conspiracy may be considered against a defendant who you find was a member, even though such acts or declarations were made in the absence and without the knowledge of that defendant.

It is important to note that this principle applies only to the acts and declarations done or made during the continuance of the conspiracy and in furtherance of it, that is, to carry out an unlawful objective or purpose of the conspiracy. It does not apply to acts or declarations which do not have these characteristics.

As I have already mentioned, an essential element of the crime of conspiracy is that an overt act to effect the object of the conspiracy be committed by at least one of the co-conspirators.

An overt act is any step, action or conduct which is taken to achieve or further the objective of the conspiracy

An overt act need be neither criminal nor the very crime which is the object of the conspiracy. Thus, in this case, the overt acts listed in the indictment are not necessarily, by themselves, criminal or illegal.

If you find that any of these acts were committed to further the unlawful enterprise, regardless of whether it was an act which by itself would be innocent, then the overt act requirement has been satisfied.

I indicated before when I was reading from Count 1 that it alleged certain overt acts. I will now turn back to Count 1 of the indictment and read the alleged overt acts:

"OVERT ACTS

"In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

"1. On or about June 27, 1973, defendant William Capo delivered a package containing phencyclidine to defendant Stuart Steinberg, in the vicinity of 135 East 35th Street, New York, New York."

I state to you as a matter of law that that location is within the Southern District of New York. Whether or not this happened is a matter for you to determine from the evidence before you.

"2. On or about July 10, 1973, defendant Stuart

Steinberg delivered a package containing phencyclidine, in the vicinity of 135 East 35th Street, New York, New York.

"3. On or about July 10, 1973, defendant Michael Durst went to 135 East 35th Street, New York, New York.

"4. On or about July 17, 1973, defendant Stuart Steinberg discussed the sale of ten pounds of phencyclidine for $136,000.

"5. On or about July 23, 1973, the defendant Jeffry Priesman had a telephone conversation.

"6. On or about July 26, 1973, defendants Howard Kaye and Stuart Steinberg discussed the sale of fifty pounds of either cocaine or phencyclidine for $680,000.

"7. On or about July 26, 1973, defendants Stanley Nicastro and Stuart Steinberg had a telephone conversation.

"8. On or about July 26, 1973, defendants James Parker and Jane Doe, a/k/a 'Sam', had a telephone conversation.

"9. On or about August 26, 1973, defendants Susan Weinblatt and Stuart Steinberg discussed the sale of ten pounds of hashish.

"10. On or about August 8, 1973, defendant Stephen Effron offered to sell three pounds of cocaine to defendant Stuart Steinberg.

"11. On or about August 28, 1973, defendant John Perlman discussed the sale of fifty pounds of phencyclidine."

Now I have finished reading the alleged overt acts.

It is not necessary for the Government to prove that each member of the conspiracy committed or participated in the particular overt act, since the act of any one done in furtherance of the conspiracy becomes the act of all the other members.

Also, the Government is not required to prove each of the overt acts.

If you find that any one of the overt acts was done in the Southern District and that it was done in furtherance of the conspiracy charged, then this requirement has been satisfied.

While the indictment charges in Count 1 that the conspiracy began on or about the 1st day of June 1972 and continued to the date of the filing of the indictment, which, as I have indicated, was December 5, 1973, it is not essential that the Government prove that the conspiracy started and ended on or about those specific dates.

Indeed, in the present case, the Government's proof, as I recall, is that the conspiracy ended on or about August 24, 1973 and encompassed a period which ran from approximately June to September of 1973.

It is sufficient if you find that in fact a conspiracy was formed and existed for some substantial time within the

period set forth in the indictment and that at least one overt act was committed in furtherance thereof in that period.

We turn now to the so-called substantive counts, Counts 2, 3 and 4, which I will discuss together, and Counts 5, 7 through 12 and 14.

Counts 2, 3 and 4 of the indictment charge the defendants Steinberg and Capo as follows:

"SECOND COUNT

"The Grand Jury further charges:

"On or about the 26th day of June 1973, in the Southern District of New York, Stuart, Steinberg, William Capo and Michael Durst, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule III controlled substance, to wit, approximately .21 grams of phencyclidine hydrochloride.

"(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B).)

"THIRD COUNT

"The Grand Jury further charges:

"On or about the 27th day of June 1973, in the Southern District of New York, Stuart Steinberg, William Capo and Michael Durst, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule III controlled substance, to wit, approxi-

mately 50.43 grams of phencyclidine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B).)

"FOURTH COUNT

"The Grand Jury further charges:

"On or about the 10th day of July 1973, in the Southern District of New York, Stuart Steinberg, William Capo and Michael Durst, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule III controlled substance, to wit, approximately 222.8 grams of phencyclidine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B).)"

With regard to these so-called substantive counts of the indictment, Counts 2, 3 and 4, before you can find a defendant guilty of the crime charged, you must be convinced that the Government has proved each of the following elements beyond a reasonable doubt:

First: that on or about the dates charged, the defendant either distributed or possessed with intent to distribute a controlled substance;

Second: that on each occasion the defendant named did so unlawfully, wilfully and knowingly, and

Third: that the controlled substance was phencyclidine

hydrochloride, which is sometimes called "PCP".

You will note that the first element of the offense is distributing or possessing with intent to distribute the particular substance.

At the outset, you will note that these terms are used in the alternative. Therefore, you may find that the first element is established if you are satisfied either that the defendant you are considering distributed or possessed with intent to distribute. You need not find that he did both.

What do these terms mean? The word "distribute" means the actual constructive or attempted transfer of the drug. That definition is contained in Title 21, United States Code, Section 812, subdivisions 8 and 11.

The word "possessed" has its common, everyday meaning, that is, to have something within your control.

The word "intent" refers to a person's state of mind. As far as intent is concerned, you are instructed that a person is presumed to intend the natural and probable or ordinary consequences of his acts.

Again, in determining whether the defendant Steinberg had the specific intent to distribute a controlled substance, you should consider his mental and physical condition at the time.

If because of Steinberg's own drug use and the

consequence effect of such drugs on his mental and emotional state, you find a reasonable doubt that he was capable of forming the specific intent to distribute a controlled substance at the time of the transaction, you must acquit him.

Putting all the words that I have mentioned together, the term "possess with intent to distribute" can be fairly stated to mean to control an item with the state of mind or purpose of transferring that item.

As to the second element, the terms "unlawfully", "wilfully" and "knowingly", which I also defined before, mean that you must be satisfied beyond a reasonable doubt that the defendant knew what he was doing and that he did it deliberately.

Of course, it is not necessary that the particular defendant you are considering knew that he was violating any particular law. Rather, it is sufficient if you are convinced beyond a reasonable doubt that he was aware of the general unlawful nature of his acts.

As to the third element, the indictment charges that the controlled substance is phencyclidine. I instruct you as a matter of law that phncyclidine is a controlled substance. However, you must still find beyond a reasonable doubt that the substance in Government's Exhibits 4-B, 5-C and 7-C is phencyclidine or PCP.

On that subject, you have heard the testimony of Michael Tsouros, the chemist employed by the Drug Enforcement Administration.

Turning now to Counts 5, 7, 8 through 12 and 14:

These counts charge violations of Section 843(b) of Title 21, United States Code, which makes it a crime for anyone "knowingly and intentionally to use any communication facility in committing or in causing or in facilitating the commission of any act or acts" in violation of the laws which are set forth in this indictment.

In this case, it is charged that the defendants used the telephone in furtherance of the conspiracy charged in Count 1, an act in violation of the laws which are set forth in the indictment.

There are, as I have indicated, a number of counts here. I will read the first of them, Count 5, or the Fifth Count, and then, rather than continuously read them, I will summarize the other counts.

"FIFTH COUNT

"The Grand Jury further charges:

"On or about the 26th day of July 1973, in the Southern District of New York, James Parker and Jane Doe, a/k/a 'Sam', the defendants, did unlawfully, wilfully and knowingly use a communication facility, to wit, the telephone,

in committing and in causing and facilitating the commission of the conspiracy set forth in Count 1 of this indictment. (Title 21, United States Code, Section 843(b).)"

The seventh count charges a telephone conversation on the same day, the 26th day of July, 1973, involving Stuart Steinberg and Howard Kaye.

The eighth count also alleges a telephone conversation on July 26, 1973, involving Stanley Nicastro and Stuart Steinberg.

Count 9 alleges a telephone conversation on or about July 31, 1973, involving William Capo, Michael Durst and Stuart Steinberg.

Count 10 alleges a telephone conversation on or about August 6, 1973, involving William Capo, Michael Durst and Stuart Steinberg.

Count 11 alleges a telephone conversation on or about August 6, 1973, involving Stuart Steinberg and Stephen Effron.

Count 12 alleges a telephone conversation on or about August 8, 1973, involving Stuart Steinberg and Stephen Effron.

Count 14 alleges a telephone conversation on or about August 8, 1973, involving Susan Weinblatt and Stuart Steinberg.

In order to convict any defendants on these counts, you must find each of the following elements beyond a reasonable doubt: --

I would suggest, on the counts which go from Counts 5 through 14, although there is no Count 6, and there is no Count 13, Mr. Steinberg is named in Counts 7 through 12 and 14; Mr. Capo is named in Counts 9 and 10; Mr. Kaye is named in Count 7, and Mr. Parker is named in Count 5.

In order to convict any defendant on these counts, you must find each of the following elements beyond a reasonable doubt:

1. That the conspiracy charged in Count 1 existed.

2. That on or about the date charged the defendant or defendants knowingly or intentionally used the telephone.

3. That this use of the telephone was for the purpose of furthering the conspiracy charged in Count 1.

You may consider evidence relating to a defendant's mental state at the time of the alleged commission of certain acts such as telephone conversations he may have engaged in, to determine whether he possessed the mental capacity and intent required to constitute a violation of the Federal narcotics laws.

The defendants Kaye and Steinberg contend that by virtue of mental disease or defect resulting at least in part

from their use of drugs, they were not responsible for their conduct at the times and places charged in the indictment. They have offered evidence in support of this contention.

The Government has offered evidence in opposition to it. The burden of proof is upon the Government to prove beyond a reasonable doubt that each defendant was responsible for his conduct during the period covered by the charges in the indictment.

The law defines mental disease as defect for the purpose of responsibility for criminal conduct as follows:

"A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law."

Under that definition, any lack of capacity must be the result of mental disease or defect, including disease or defect induced by the use of drugs and must be substantial.

The lack of capacity may be either to appreciate one's wrongful conduct or to conform such conduct to the requirements of law. The mere fact that a person repeatedly engages in criminal conduct does not in and of itself justify a finding that he or she is not responsible for his conduct.

You will recall that the defendants Kaye and

Steinberg called three doctors who have specialties in psychiatry. They had the other specialties, but I mention psychiatry at this time. You heard that testimony, and you should consider that testimony on the issue of the responsibility of the defendants Kaye and Steinberg for their conduct.

However, you are by no means limited in considering this issue to the opinions of these doctors. You are entitled to take into account, and you should take into account, any other evidence that you believe relates to that issue, including the evidence which you have previously considered on the issue of whether a particular defendant's conduct was wilful.

The defendant Steinberg also contends that the transactions in this case were induced by Government employees. In short, he advances a defense which the law terms entrapment or enticement.

Under this defense, if you find that no crime would have occurred but for the conduct of Agents Noone and Anderson or Ricky Citrola, you must acquit Steinberg of all charges.

Now, let us consider this defense. Law enforcement officials, in their efforts to enforce the criminal laws and to apprehend those engaged in criminal activities, may resort to strategems or deception and may also use informers.

Such methods are not in any way forbidden by law and are often necessary in the detection and prosecution of certain crimes.

Whether or not you personally agree with the policy of using such methods is not in issue and is not before you. The fact that Government officials or employees merely afford opportunities or facilities to one who is ready and willing to violate the law when the opportunity presents itself does not constitute entrapment or enticement.

When, for example, the Government has reasonable grounds for believing that a person is engaged in the illicit B7 sale of narcotics, it is not unlawful entrapment or enticement for a Government agent to pretend to be someone else and to offer, directly or through an informer or other decoy, to purchase narcotics from such suspected person.

However, in their efforts to enforce the laws, the Government officials or employees may not entrap an innocent person who, except for the Government's inducement would not engage in the criminal conduct charged.

Thus, if the criminal design originates with the Government officers or employees, and they implant in the mind of an otherwise innocent person the disposition to commit the crime charged and to induce its commission, the prosecution may not succeed.

In short, entrapment or enticement occurs only when the criminal conduct was the product of the creative activity of law enforcement officials; that is, if they initiate, incite, induce, persuade or lure an otherwise innocent person to commit a crime or to engage in criminal conduct. And if that occurs, the Government may not avail itself of the fruits of those instigating activities.

Such conduct offends the public conscience, and so, while the crime may have been committed, the Government is barred from benefiting by the improper conduct of its own officers or employees.

Here, Steinberg contends that he was free of any criminal purpose to deal in drug transactions and that he had no previous disposition, intent or purpose to engage in such criminal activity but was induced to engage in the conduct charged against him by the creative activity of Government officials or employees.

The Government denies this and contends that Steinberg was merely afforded the opportunity on each occasion to commit the offense and that he readily and willingly responded thereto and engaged in the transaction which are the subject of the indictment without inducement of any kind.

In this case, Agent Noone is a Government agent or

employee. If you find some evidence that a Government agent, by initiating the illegal conduct, induced the defendant to engage in such conduct, then the Government must prove beyond a reasonable doubt that the inducement was not the cause of the crime, that is, that the defendant was ready and willing to commit the crime without any persuasion.

To sustain its burden of proof, the Governmen has to satisfy you that, in fact, its agents have not seduced an innocent person but that the inducement which brought about the offense charged against Steinberg was but another instance of the kind of conduct which he was prepared to engage in if given an opportunity.

Now, at the beginning I indicated that you are the triers of the fact. You have to determine the truth, and you have to appraise the credibility of the testimony and of the witnesses in this case.

Now, how do you determine the truth and how do you appraise the credibility of the witnesses who appeared here and testified in this courtroom?

Well, you use your own plain, every day common sense. You brought your common sense with you the first day you stepped into this jury box. You have it with you now. You will take it into the jury room, and I trust that when you return ultimately from the jury room you will still

have it with you.

You have seen the witnesses; you have observed the manner of their testifying, and whatever credit you may give them must be determined by their conduct and their manner of testifying and their relationship or interest in the outcome. In other words, you again apply your common sense in your everyday experience.

You may, of course, take into consideration the interest of a witness. For example, the narcotics agents might be said to have an interest in this case. It is a case which they investigated. An interested witness is not necessarily unworthy of belief. This is just one factor, however, which you should consider or may consider in determining the weight and credibility to be given to that witness' testimony.

If any witness has wilfully testified falsely to any material fact, you may disregard all his testimony or accept such part of it as you believe worthy of belief or as it appeals to your reason or your judgment.

A witness may be discredited or impeached by contradictory evidence or by evidence that at other times the witness has made statements which are inconsistent with the witness' present testimony.

If you believe that any witness has been impeached

and thus discredited, it is your exclusive province to give the testimony of that witness such weight and credibility, if any, as you may think it deserves.

Because a particular witness may be a police officer or another law enforcement officer such as an agent of the Drug Enforcement Administration, that does not mean that his testimony is deserving of any special consideration or any greater or lesser weight by reason of that fact.

You take the witnesses as you find them; you watch them as they testify and you determine based on your own common sense what the facts are.

You will recall that the defendants did not testify. A defendant has the absolute right to remain silent and you must not regard as prejudicial to a defendant the fact that he did not take the stand. You must not draw a presumption of guilt or any inference against a defendant because he did not testify.

I said a while back that I would come back to the matter of direct and circumstantial evidence. It is well to explain now the difference between these two types of evidence.

Direct evidence is where a witness testifies to what he saw, heard or observed, what he knows of his own knowledge, something which comes to him by virtue of his own

senses.

Circumstantial evidence is evidence of facts and circumstances from which one may infer connected facts which reasonably follow the common experience of mankind. Stated somewhat differently, circumstantial evidence is that evidence which tends to prove a disputed fact by proof of other facts which have a logical tendency to lead the mind to a conclusion that those facts exist which are sought to be established.

Circumstantial evidence, if believed, is of no less value than direct evidence, for in either case you must be convinced beyond a reasonable doubt of the guilt of the defendant you are considering.

Let us take one simple example, one which is offered in this Courthouse, to illustrate what is meant by circumstantial evidence. We will assume - although it was contrary to the fact this morning - that when you entered the Courthouse this morning the sun was shining brightly outside and it was a clear day, there was no rain, the sky was clear.

Now, assume that in this Courtroom the blinds are drawn and the drapes are closed so that you cannot look outside. Assume that you are sitting in this jury box and despite the fact that it was dry when you entered the building

somebody walks in with an umbrella dripping water, followed then in a short time by a man with a raincoat, and the raincoat is wet.

Taking our assumptions, you cannot look out the Courtroom to see whether it is raining or not, and if you are asked, is it raining, you cannot say you know it directly of your own observation, but certainly upon the combination of facts as I have given them, even though when you [illegible] building it was not raining outside, it would be reasonable and logical for you to conclude that it was raining now.

That is about all there is to circumstantial evidence. You infer on the basis of reason and experience from an established fact the existence of some further fact.

There are times when different inferences may be drawn from facts, whether they are proved by direct or circumstantial evidence. The Government may ask you to draw one set of inferences while the defendants may ask you to draw another. It is for you to decide, and for you alone, what inference you will draw.

Knowledge and intent, which I have mentioned before and tried to define for you, exist in the mind. Since it is not possible to look into a man's mind to see what went on, the only way you have for arriving at a decision is these inferences.

It is for you to take into consideration all the facts and circumstances shown by the evidence, including the exhibits, and to determine from all such facts and circumstances whether the requisite knowledge and intent were present at the time in question. Direct proof is unnecessary. Knowledge and intent may be inferred from all the surrounding circumstances.

On the question of knowledge and willfullness, you may also consider false statements as evidence of a defendant's guilty state of mind. If you find that a defendant when questioned by a law enforcement official made any deliberate false statement, you may consider such false statement as circumstantial evidence from which consciousness of guilt or criminal intent may be inferred. This is so because of the well established legal principle that exculpatory statements made upon interrogation with intent to divert suspicion or mislead the investigator, when shown to be false, are circumstantial evidence of guilty consciousness and have independent probative force.

Again, whether or not evidence as to a defendant's explanation or statement points to a consciousness of guilt, and the significance, if any, to be attached to any such evidence, are matters for determination by you.

Certain alleged false statements by the defendant

Kaye have been testified to. This evidence may be considered as relevant evidence of whether the defendant Kaye acted knowingly and willfully in connection with the charges of conspiracy and unlawful use of a communication facility as alleged in this indictment.

Turning from the subject which I just discussed to one other subject. You have heard me mention at the beginning of the trial and during this charge reasonable doubt.

What is reasonable doubt? A reasonable doubt is such a doubt as would cause prudent men to hesitate to act in matters of importance to themselves. It is a doubt which a reasonable person has after carefully weighing all the evidence. Reasonable doubt is one which appeals to your reason, your judgment, your common sense and your experience. Reasonable doubt is not caprice, whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant. Vague, speculative or imaginary qualms or misgivings are not reasonable doubts.

It is not necessary for the Government to prove the guilt of each defendant to a mathematical certainty or beyond all possible doubt. If that were the rule, few men or women, however guilty they might be, would be convicted. The reason is that in this world of ours it is practically

impossible for a person to be absolutely certain of any controverted fact which by its nature is not susceptible of mathematical certainty. In consequence, the law is such that in a criminal case it is enough that the defendant's guilt is established beyond a reasonable doubt, not beyond all doubt.

If, after a fair, impartial and careful consideration of all the evidence, you are convinced of the guilt of the defendant you are at that point considering, you must convict. If, on the other hand, after such a fair, impartial and careful consideration of all the evidence, you doubt the defendant's guilt, you must acquit him.

You are to decide the case upon the evidence and the evidence alone. You must not allow your personal feelings about the sexual activities, morals or the ways of life of the defendants to affect your decision, and you must not be influenced by any assumption, conjecture or sympathy or any inference not warranted by the facts until proven to your satisfaction.

The defendants have each been charged with separate crimes in the 12 counts of the indictment which are being given to you. I have indicated that of the 14 counts originally, 12 will be submitted to you, Counts 1 through 5, 7 through 12 and 14. You recall from what I have told you

that different defendants are charged in different counts.

Each defendant is entitled to have his guilt or innocence as to each of the crimes charged determined from his own conduct and on the evidence which applies to him as if he were being tried alone. When you deliberate, you shall give separate consideration and render separate verdicts with respect to each defendant and each count.

To assist you, and only to assist you in this, not to suggest anything one way or the other, Miss Kruger will hand your foreman a verdict form which sets forth the names of the defendants, the numbers of the counts on which they are charged, and then have a space for your foreman to work with as the jury deliberates. This is done merely to assist you and is not given to you to suggest anything.

If you find that a defendant is guilty beyond a reasonable doubt on any of the crimes charged in the indictment, a verdict of guilty as to that count should be returned as to him. The guilt or innocence of any one defendant of any of the crimes charged should not influence your verdict regarding any other defendant. You may find either one, two, three or all of the defendants guilty. You might find either one, two, three or all of the defendants not guilty. You will consider each defendant individually on each charge.

I will conclude with these few final remarks:

Under your oath as jurors you may not allow the consideration of punishment which might be inflicted upon a convicted defendant to influence your verdict in any way or in any sense enter into your deliberations. The duty of imposing sentence rests exclusively upon the Court. Your function is solely to determine the guilt or innocence of each defendant upon the basis of the evidence and the law.

If you believe that some or all of the charges against a defendant have not been proven beyond a reasonable doubt, that defendant should be acquitted of those charges which the Government has not proved beyond a reasonable doubt. But, on the other hand, if you find that a charge has been proved beyond a reasonable doubt, you should not refuse because of sympathy or for any other reason to render a verdict of guilty.

There are 12 people on this jury. Any verdict must be the unanimous verdict of all of you. However, no one should enter upon the deliberation in the jury room with such pride of opinion that he or she would refuse to change it if convinced by intelligent argument on the part of another juror or jurors that they are right. However, you are not to do violence to your own well founded opinion and common sense.

As I said a few moments ago, you will be taking your good common sense into the jury room. I expect that when

you come out of the jury room your good common sense and your good conscience will accompany you.

You are entitled, each of you, to your opinion. In other words, each of you must decide the case for himself or herself after thoroughly reviewing the evidence and exchanging views with your fellow jurors.

B9 After I have met with counsel at the side bar Miss Kruger will give your foreman the verdict form to which I made reference a few moments ago to assist you in reviewing this case.

After you have exchanged your views in the jury room, you should vote on each defendant and on each count separately, and the vote will be kept by your foreman.

When you go into the jury room, ladies and gentlemen, you will be placed in charge of the marshal. All communications with the Court after you are placed in charge of the marshal will be by note given to the marshal. Your note will then be delivered to me. I will then review what you request with counsel, and, where proper, will try to oblige you and respond to your requests.

It is now five minutes after eleven. As I say, I am going to speak with counsel just a moment. In the meantime I would remind you that if you are deliberating during the middle of the day, the so-called lunch hour, I will give

you an option based on the weather. If you wish to order sandwiches sent in, you may do so. I suggest if you do that, you allow for perhaps an hour from the time you place your order to the time the sandwiches are delivered. If you wish to go out the marshal will take you out to a restaurant. So I suggest that since we are close to the noon hour you might consider which of those two options you wish to exercise. Needless to say, your lunch will be paid for either way.

I suggest, finally, that this is an important case to all concerned, and I want this jury to deliberate with the idea in mind that you are under no pressure to act or not act. Your first obligation is to review the evidence in the case, to discuss it fully and thoroughly.

I will see to your convenience in every way possible, so that I would ask that you put out of your mind any feelings of pressure, because you are now about to engage in one of the most important duties of citizenship.

Ladies and gentlemen, I have now completed my charge. Before sending you to deliberate, I will see counsel at the side bar. In the meantime I would ask Mrs. Satin to get her coat from the jury room and to return to the Courtroom, because after I send the jury in to deliberate, I should like to speak with her. She is in the frustrating position of having been our sole surviving alternate juror. She has

sat through this case but will not be able to be present to deliberate with you. So when I send her on her way I want to thank her personally on behalf of all of us for the service which she has rendered to this Court in the case here on trial.

So, Mrs. Satin, if you will just step out, get your belongings and return to your seat, I would appreciate it.

I will see counsel at the side bar.

(At the side bar.)

THE COURT: I will ask first if there are any exceptions, and then I will ask if there are any supplementary requests.

I will turn first to you, Mr. Mukasey.

MR. MUKASEY: Your Honor, only in the nature of requests, I have two. First, that your Honor indicated in discussing the conspiracy count, that a defendant quite properly cannot be found guilty of conspiring with the Government.

On the other hand, I would ask that your Honor tell the jury that David Stolzenberg is a co-conspirator, and there are others, but I think he is the only relevant one who appears on the tapes who is not accounted for in the indictment.

Request number two really concerns the aiding and abetting theory with regard to Counts 2, 3 and 4.

As I understand it, the Government is entitled, if the evidence warrants it, to an aiding and abetting charge with regard to a substantive count even though Title 18, Section 2, may not be set forth in the indictment. Title 18, Section 2 is not, in fact, set forth in the indictment, but I think the facts of the case warrant an aiding and abetting charge, and we would request it.

THE COURT: I will hear the other counsel on both of your requests and then I will hear them on any of theirs.

MR. ARKIN: With respect to Mr. Mukasey's first request, your Honor, I don't believe your Honor can properly charge Mr. Stolzenberg is a co-conspirator. I just don't think it is an appropriate request.

As far as the second request, it really does not affect my client. I believe that is one which Mr. Levison ought to speak to.

MR. LEVISON: In the indictment it charges that Durst, Steinberg and Capo did certain overt acts which would contravene the request that Mr. Mukasey wants as to that particular charge.

As I said the other day, I don't know how to handle a person's rights, where they are indicted, where the

alleged co-conspirator, the one who is deceased, and mentioned on the tape.

THE COURT: Do you object to my giving an aiding and abetting charge as a supplement to my charge?

MR. LEVISON: Is there any way that charge can be made showing that Durst--he mentioned Durst. Do you know what I mean by that? They are both connected.

THE COURT: Do you object?

MR. LEVISON: I object.

THE COURT: I considered this matter when I was reviewing the requests to charge, and for several reasons I determine not to charge aiding and abetting. It had been requested and was one which I had denied.

I am going to adhere to my prior ruling.

I think on your first request, Mr. Mukasey, it would be inappropriate for me to go further. If the jury should make a request later to know who or what Mr. Stolzenberg is, I can deal with it at that time after consulting with all of you. And therefore I will decline to supplement my charge relative to David Stolzenberg. I will also decline to charge aiding and abetting.

Now, I will hear from the defendants.

MR. LEVISON: You didn't mention Durst as to overt acts--

THE COURT: I have handled it to the extent that I intend to.

MR. LEVISON: All right, that is an answer.

THE COURT: Let me ask first if you have anything further. I will start with Mr. Arkin and then I will go to Mr. Levison and then Mr. Ellis and then Mr. Siegel.

MR. ARKIN: As your Honor well knows, under the Federal rules I have to repeat my exceptions to the requests which were denied.

So we except to the failure to charge defendant Steinberg's requests 3, 12A through C, 13, 14B, 16, 18B, 23, 24, 26, 26A, 28A, 28B, 28C, 31, 32, 35 through 40, 42 and 26B and C, and 39A and B.

Now first, if your Honor please, I would request --this is in the event the jury calls for the indictment--I would ask that the indictment be redacted first to remove the paragraphs--

THE COURT: It has been. It is already redacted.

MR. ARKIN: Also to remove reference to anybody against whom there is no proof, as certain of the alleged co-conspirators who have been cut lose from the case one way or the other.

THE COURT: I will suggest that you look at the

redacted indictment. It is not going to go in now. It is only going to go in when requested, and then we can cover that matter. I am not going to send it in with them now.

MR. ARKIN: Now, one of the principal exceptions or objections I have to your Honor's charge in this respect is that your Honor--

THE CLERK: One of the jurors is uncomfortable and would like to be excused.

B10

(End of side bar discussion.)

THE COURT: I believe that one of the jurors would like to step inside.

What I am going to do is, I am going to send you all into the jury room with the strict instructions not to begin your discussion of the case.

Mrs. Satin, if you are comfortable you can wait here.

The jury is to go into the jury room with my instructions not to begin deliberating in the case until I have finished with counsel. You will be more comfortable there for the next few minutes.

The jury is excused. Mrs. Satin, you will remain out here.

(The jury left the Courtroom.)

A 70

(In open court, jury not present.)

THE COURT: Would any of you have any objection to my excusing Miss Satin at this time?

MR. ARKIN: I can't see why not, your Honor.

THE COURT: Very well.

MR. LEVISON: I have none.

THE COURT: There being no objection, Mrs. Satin, we have some more legal business to perform. I am going to take this opportunity on my own behalf and on behalf of all counsel to thank you very much for your service on this jury.

As I said, you stand and sit in a frustrating position of not having actually been able to deliberate on the case, but as you saw from the fact that one of our jurors left us, alternate jurors are very important.

Had there been one other juror who would not have appeared today or been ill, you would have been in there today deliberating with the rest of them.

So on my own behalf and on behalf of the Court, I want to thank you very much for your time and for your effort on our behalf.

MR. ARKIN: I have to keep my voice down, your Honor.

THE COURT: Yes.

MR. ARKIN: If your Honor please, with respect to your Honor's instruction on the first count, the conspiracy count, I realize that it was a very difficult problem to handle that count.

I had many objections before the charge to the count being submitted on the ground we would never really know how the jury would decide it. So your Honor gave the Kotteakos charge, but you gave it in conjunction, if your Honor please, with a charge to the effect that "if you find only one purpose of the indictment was agreed to by any two conspirators" that they might find those two conspirators guilty of the first count.

I suggest, your Honor, that the problem which is raised by that charge -- you can give it in conjunction with the Kotteakos charge -- I will use a word often used in this case, it is an analog of the Stromberg and California problem, which I am sure your Honor is familiar with.

In other words, where you have a case submitted to the jury on one of several theories -- at least in the Stromberg case -- one of which is impermissible and one of which is not, and the jury returns a verdict without specifying which of the theories they made the determination upon, why, the verdict itself lacks the proper integrity

in order to be sustained.

Here it is not quite the same as Stromberg, but it is an analog in that we have here the problem of several different defendants and known present alleged co-conspirators and unindicted co-conspirators and we have several theories within the context of this case.

We have the cocaine theory, the TPT theory, the hash theory, we have the seconal and tuinal theory and we would not know from the jury's verdict what it was.

That raises a problem that perhaps cannot be overcome, but to the extent I would say your Honor's charge, the case itself, the very count itself raises that problem, I must except to it.

Now, I have a few other things.

When your Honor charged in respect to overt acts, I would suggest that your Honor instruct the jury that an act by an agent is not an overt act.

Some of the overt acts charged could have been on the facts as presented in this case, having to do with Brian or Ricky or Haralambus, I believe his name was, and I would suggest that minor instructions be given.

With respect to overt acts, as I understand the law, an overt act, to be an overt act within the conspiracy, must be one following along the same lines as before,

committed by an alleged co-conspirator in furtherance of the particular conspiracy charge.

And I believe your Honor, while charging on over acts, may not have stated that the overt act must be committed by -- to be a part of the conspiracy -- must be committed by a co-conspirator who has been found to have joined in the agreement, the criminal agreement.

Now, I have one very substantial exception at this point, which is that in the course of your Honor's charge, your Honor lumped together Mr. Steinberg with Mr. Kaye insofar as the insanity defense.

Now, Mr. Steinberg has never asserted an insanity defense, either by way of formal application or during my summation.

During my summation, I said that my client was not insane. I said that he behaved in an ill fashion because of the drugs, as a consequence of the drugs upon him.

My argument, my defense, if your Honor please, was that Steinberg, affected by the drug as he was, the drugs having a suggestible effect, that is to say, the drugs having an effect making him more easily controlled by people, he was more easily controlled by the agents who visited upon him their suggestion that he engage in

particular activities.

I am afraid that the jury hearing your Honor's instructions and lumping Mr. Steinberg with Mr. Kaye and Mr. Kaye to psychiatrists, whom we didn't call, whom we didn't examine -- I didn't even cross-examine them, I didn't even blink an eye at them -- I think puts the thrust of our defense off center, possibly, in the jury's mind.

The jury might think the issue with respect to Mr. Steinberg was his appreciation of right or wrong, when as a matter of fact, our defense was nothing like that. Our defense was the conduct he engaged in was suggested to him at the time when he was suggestible and under the influence of the drugs at that time.

In fact, the defense goes to the requisite specific intent. I think, your Honor, I discussed that at the bench the other day. And it is not an insanity defense. And I think the charge lumped together with Mr. Kaye may have put our defense --

THE COURT: In other words, you are complaining that I have given you actually an additional defense because I did include your charge, requests on the matter of the drugs affecting his intent.

MR. ARKIN: Well, no. I am concerned, really, your Honor, that by lumping our defense together with a

straight insanity defense, that is, the Durham rule and Martin rule which I believe your Honor charged --

THE COURT: I never used the word "insanity." I think you know that. And I never used the words "sane" or "insane" to my recollection; and that was consciously done.

MR. ARKIN: That is a Durham term, your Honor.

THE COURT: Yes, it is a Durham term.

MR. ARKIN: And the difficulty, as I see it, is that it detracts from or emasculates the defense we put forward which would be the intent defense.

We did submit charges along Archer which were rejected; and I understand that. But the point is we had an intent defense and we never put a treating psychiatrist on.

And by having us compared together with Kaye where we didn't have a psychiatrist, it makes the defense we had as to Dr. Solomon, Snyder and the evidence that this man was ingesting drugs, it reduces it, as we say, takes it out of focus.

So I would ask your Honor to explain by way of a supplementary instruction that the defendant Steinberg does not claim he was mentally diseased, but rather that he was in a drug intoxicated state, as your Honor did on

Charge 14-A.

THE COURT: I gave 14-A.

MR. ARKIN: Yes, you did, your Honor.

THE COURT: So what I am saying is I have given you an extra defense.

If you would like me to take back from the jury anything I said lumping Mr. Steinberg with Mr. Kaye on mental disease or defect resulting from the use of drugs, which is the way I put it, I will do so.

MR. ARKIN: I would ask that your Honor distinguish us from Mr. Kaye absolutely and instruct --

THE COURT: No, if you want me to withdraw your defense in that regard, I will do so.

If I heard you correctly, I think I correctly stated to the jury your argument. At the very worst, I have given you an additional defense which I think can fairly be inferred from your presentation.

MR. ARKIN: Well, if your Honor --

THE COURT: I don't think that you do want me to withdraw that in those words, do you, say that the defendant Steinberg withdraws any defense that by virtue of mental disease or defect resulting from the use of drugs, he was not responsible for his conduct?

Now, do you want me to do that?

MR. ARKIN: Not in those words.

THE COURT: Then I won't change my charge in that respect.

Next.

MR. ARKIN: Right.

Your Honor, there were two points in your charge, one time when you defined Agents Noone, Anderson and Ricky as Government agents and informants, respectively, and then at a later point in the charge when you were speaking of the entrapment defense, or the enticement defense, you only referred to Agent Noone.

And that was a later point in the charge, particularly when it was important because you were getting into the Pignatola charge there, the entrapment or enticement charge.

I would ask your Honor to --

THE COURT: No, in the entrapment charge, I referred to Mr. Citrola, as well.

I will read you the beginning of it and I think you will have the thrust of it:

"The defendant Steinberg also contends that the transactions in this case were induced by Government employees. In short, he advances a defense which the law terms entrapment" -- and I think I added something

about "or enticement."

But I went on with this language:

"Under this defense, if you find that no crime would have occurred but for the conduct of Agents Noone and Anderson or Ricky Citrola, you must acquit Steinberg of all charges."

MR. ARKIN: If I am mistaken, I apologize, your Honor.

THE COURT: Then you are withdrawing that one?

MR. ARKIN: Your Honor has proven to me my notes are incorrect.

THE COURT: That is what I had down here and I do hope I read it as I wrote it.

MR. ARKIN: Then I withdraw that request.

THE COURT: Anything else?

MR. ARKIN: One other request and that is that your Honor did not charge, as I recollect, that the jury may agree or disagree with respect to any one defendant or any one count. And I believe you gave the alternatives of guilt or innocence, but not as your Honor did the other day, that is, yesterday, the alternative of disagreement.

THE COURT: Well, I said so many times they have to consider each defendant on each count and I did indicate yesterday during the course of Mr. Mukasey's summation they

could disagree.

I think it would be inappropriate at this point to suggest that they should disagree. If they do disagree, I know they will. They have heard enough to know that they are to consider this case carefully.

I would suggest that I should not supplement my charge by indicating to the jury that they can disagree. Therefore, I will decline to supplement my charge in that regard.

Is there anything else?

MR. ARKIN: Well, I will sit down now.

THE COURT: Mr. Levison?

MR. LEVISON: Your Honor knows the proposition that I cited as a matter of law on the question of the indictment coupling this defendant with a deceased defendant and how to handle that situation, if the jury should call for a copy of the indictment.

Even though Mr. Durst's name should not be in there, how do you handle a situation in the protection of this defendant where it is alleged that these -- and not only that the tapes were played to the effect that Durst had spoken, and I have no way of protecting his interests, the right to that particular type of allegation in the indictment, or as to any overt act that was committed

jointly with a deceased person.

THE COURT: Do you have an exception that you wish to take to the charge? Do you have a supplemental request?

MR. LEVISON: No. Your charge up to this point does not mention Durst at all. The only thing, yesterday Mr. Mukasey said something about Durst. And then the jury -- it would be speculation on their part, I feel, and I want a fair trial -- that how do you handle a situation where you have a deceased person?

I tried to find something on it and I know it is very difficult. The dead man statute doesn't seem to apply as far as New York law is concerned, or even going back to your statement as to the old common law principle.

But the point in my mind, in fairness to all the defendants and also to the people, if we are leaving something undone -- and that is my idea in handling a lawsuit -- that if we can handle it with the purpose in mind of bringing out any question of doubt, whether it goes one way or the other, we should try in some way to handle that allegation or overt act as it has been set forth, not only in the tapes but in the indictment itself.

THE COURT: I would suggest that early in my charge, I indicated that the indictment named eleven

defendants, that only four of them were on trial befor this jury, and they are the only persons whose guilt c innocence is before the jury. Therefore, we have seven people who are not. It does appear to me that one is deceased. There is no evidence in the record of his being deceased.

MR. LEVISON: No, that's right.

THE COURT: There are others who are severed or have pleaded and I would lump them all into one group for present purposes.

I do not think that it would have been appropriate for me to include anything further in my charge. And to the extent thatyou except to my charge because I didn't cover the matter of Mr. Durst, I would tell you that your exception is noted.

I would note that up to this point, you have not given me a request or a supplementary request in this regard. If you want to do so at this time, you may. If you have nothing further to say, you can stand on the record as it presently exists.

MR. LEVISON: Well, I think it is appropriate to stand on the record rather than prevail upon a point that is still in question in my mind as to what the law really is on that particular question.

THE COURT: Is there anything else, Mr. Levison?

MR. LEVISON: No, thank you, Judge.

THE COURT: Mr. Ellis?

MR. ELLIS: Thank you, your Honor.

Your Honor, first I respectfully except to the failure of the Court to grant my request 4 and 11.

THE COURT: What were 4 and 11? I really gave you most everything you asked for, I think.

MR. ELLIS: Yes, you did, your Honor. I forget the order, but one of my requests, I believe, was that the Government as a litigant in this courtroom should not be considered to have any greater or lesser standing than any other party.

THE COURT: 4 was, "Even close and repeated association with those proved to have committed the criminal offense which was the objective of the conspiracy does not, standing alone, establish that the person was a conspirator."

I think I gave that instruction, although I for the record denied your request.

Your 11 was, "The Government here must be considered in no different light than any other party to a lawsuit and counsel for the Government must be considered

in no different light than counsel for the defendant or any other litigant. The fact that the Government is a party entitles it to no greater or lesser consideration than accorded to any other party in a lawsuit."

I would suggest that the charge is full, complete and adequate without that specific language in it. My recollection is that I did cover this matter in the voir dire and in the initial inquiry of the jurors when I asked them to treat the parties the same. As you recall, I did do that.

I suggest the charge as presently constituted is sufficient. I covered the matter -- I think you asked for it; maybe others did -- of the weight or lack of weight to be given witnesses' testimony because they were Government agents.

MR. ELLIS: Yes, sir.

THE COURT: All right. You except to my refusal to charge your requests 4 and 11.

Anything else?

MR. ELLIS: Yes, your Honor. I have one or two supplemental requests.

Perhaps this is a question of emphasis rather than substance, but in defining for the jury the elements of the conspiracy, I thought I heard your Honor say that

each defendant must knowingly associate himself with the venture, and that suggested to my mind that the jury might conclude that association alone would be sufficient.

Although you cover that point down the road in your charge, your Honor, I think in laying out the elements and referring to association alone, we might have confused the point inadvertently.

THE COURT: I reviewed this more than once before I gave it and I think that taken as a whole, in totality, the charge on that subject is correct and fair.

So I will not supplement my charge in that regard.

Anything else, Mr. Ellis?

MR. ELLIS: Yes, your Honor, on the issue of willfulness, your Honor charged that the jury may consider the particular defendants' use of drugs at the time, I believe, or the extent to which they may well have been overcome by the use of drugs at the time.

THE COURT: Yes.

MR. ELLIS: I would respectfully request that you also charge them that they consider on the issue of willfulness, the defendants' mental health, the presence of a mental defect or disease at the time.

THE COURT: That is in the charge. I adapted

Mr. Arkin's 14-A from Steinberg to a defendant with your client in mind.

My notes indicate, "In determining whether a defendant acted knowingly and intentionally, it is relevant for you to consider his mental and physical condition during the period of time he is alleged to have committed the acts charged."

MR. ELLIS: In view of that, your Honor, I withdraw it.

THE COURT: Very well. I think it was covered. Anything else?

MR. ELLIS: One final point. On the issue of the false statement --

THE COURT: False exculpatory statement.

MR. ELLIS: Yes, your Honor. I don't think that the instruction was sufficiently clear, most respectfully, in that the jury must find, (a), the statement was in fact false and, (b), that the defendant knowing it to be false intentionally uttered the falsehood.

I thought it was a little bit vague on the first element.

THE COURT: I think it fairly states the law and I will decline to supplement my charge.

MR. ELLIS: I respectfully except.

THE COURT: Anything else?

MR. ELLIS: No, your Honor.

THE COURT: Mr. Siegel?

MR. SIEGEL: Your Honor, I will save time. I will join Mr. Arkin's objection to the first count.

THE COURT: Anything else?

MR. SIEGEL: No, your Honor.

THE COURT: Thank you.

I suggest at this point we bring in the jury and I will give them the form at this point. I held it until we were finished.

Miss Kruger, would you bring in the jury? And then I will instruct them to proceed to deliberate.

(Jury present.)

THE COURT: Miss Kruger, would you hand our foreman, Mr. Gutierrez, the verdict form? And would you place the marshal under oath to attend the jury?

(Deputy marshal was duly sworn.)

THE COURT: Now let the record reflect that Miss Kurger is handing the verdict form to Mr. Gutierrez, our foreman, and let the record further reflect that counsel have received copies of the form.

Ladies and gentlemen, I instruct you at this time to proceed to the jury room to commence your deliberation.

From this moment on, if there is anything you wish from the Court or anything you wish sent in, if you will just make out a note, hand it to the marshal, he will deliver it to me and we will endeavor to comply promptly with your request.

The jury is instructed to proceed to the jury room to commence its deliberation.

(Jury left the courtroom at 11:45 a.m., to commence deliberations.)

THE COURT: Gentlemen, I suggest the first order of business would be for counsel to examine the redacted indictment, because I would not be surprised if the first note that comes out will be for it.

This is what Mr. Mukasey gave me. And I know, Mr. Arkin, you had a question about it. And I think this would be an appropriate time to go over it and see if it is in a form which is agreeable to all, should the jury request it.

MR. ELLIS: Yes, your Honor. Will we have sound equipment here in the event there is a request for the playing of tapes?

THE COURT: Yes.

(Recess)

A 88

Exhibit
1 D 1

Reel 1D
July 26, 1973
1148 hrs
Meter 1200

Outgoing call Stuart STEINBERG to James PARKER. Number not recorded.

SS - Stuart STEINBERG
JP - James PARKER
UF - Unidentified female

SS Parker please

UF Mr. Parker's office.

SS James Parker please.

JP Stuart Steinberg. James---

SS How you doing, Parker?

JP Stuart.

SS Yes.

JP I have your underwear.

SS You have my underwear?

JP Yes.

SS How you got em.

JP You left them up in the country.

SS Oh yeah.

JP Yeah.

SS Okay.

JP How are you babe.

SS Okay, good.

JP What's doing.

SS Not much. What's doing you.

JP Nothing, hanging around.

SS Okay. How's the market.

JP Uh. Uhm.

SS How's it been yesterday and today.

JP What?
SS How's it been yesterday and today?

JP Yesterday was up fourteen bucks.

SS Today?

JP Today is uh, kinda been flat. It's just about flat.

SS Un hunh. So market's been good.

JP Uh, yeah. It's a ---

SS It's been good in the last ten days.

JP It's been worse.

SS Whadda you mean, it's been worse.

JP I mean, you know, it's good, ah, it's a little broader, there's a, ya know, some secondary stocks on the curve are picking up a little bit more action over the counter.

SS Right. So that's cool.

JP What else is doing.

SS Nothing. The stuff isn't here anymore. I mean ----- just isn't anymore quantity to be done. Can't do it. No one seems to have any merchandise. Of anything.

JP You mean of what you were talking to me about.

SS Both.

JP Both dried up.

SS Both. Both dried up. Not there. Both. Howard's supposed to be here today for two ounces and he can't have it. It's not here. So I mean I don't know. Ya know. It just isn't there to be gotten. Umh. I got people going all over the place looking for it. I got a lot of people here with a lot of money who want it. And, um, can't happen, you know, just nowhere, nothing. Both sources dried up completely.

JP It could have to do with that bust. Yesterday's bust.

SS I don't know, I don't think so. I mean this just happened in the last two days. Really. Hold on. My other phone. Hold on

Pause

JP Look it, Berkley's up a point, 7 to 3/4's.

SS Hi, that was Mr. Kaye.

JP Oh yeah. I gotta go give him a call.

SS Okay. Um, sorry, it's just that I'm dried up all around, you know, it's ---

JP Okay, unnh, Mitchell asked me to give you a message,

SS Yeah.

JP He has seventeen of what you wanted. He's expecting ten more today.

SS I hope he knows that I can't get him what he wanted.

JP All right. Well.

SS Tell him that. I don't have it.

JP Yeah.

SS I don't have it. I mean I hope to have it, but I don't have it.

JP Okay.

SS Umh. I'll have it. I hope to have it in a few days. What can I tell you.

JP Yeah.

SS Okay. But I don't want him to think that I'm putting him on.

JP I know you're not.

SS Okay.

JP Splitting for the Island tomorrow?

SS No. I may not. If the weather's lousy. I may not

JP Yeah it's supposed to be pretty ....

SS (Inaudible) suppose to be terrible. You know, there's no point in me going out there if the weather's shitty. So I'll probably. I may go, I may not. I don't know yet. But I'm supposed to make the 6:07 train.

JP Tomorrow.

SS Yeah, 6:07 tomorrow P.M. So if it's shit,ty shitty weather Saturday and Sunday

A 91

JP you doing tonight? I'm hoping that

SS Tonight, uh, well, yeah, but I may not be doing anything. I mean, I'm hanging out here taping records. I've been taping albums for weeks.

JP Silly to be in the city alone. So maybe we'll get together.

SS Okay. Dynamite Parker. Fine come on over.

JP I'll speak to you.

SS Okay, good enough. Bye Bye.

Conversation terminated.

Transcribed by Special Agent Fredric Boff.

A92

(E)

Reel 1D #10

Date 26 July 1973

Time 2134 hours

Meter 0242 Side 2

Outgoing call Parker to female Sam at 891-7767.

S Sam (Sarah WERMAN)

JP Parker

UF Unidentified Female

UF Hello

JP Sam

UF Just a minute.

JP Thank you very much.

UF Who's this?

JP Parker.

UF Okay, hang on.

S Parker?

JP Who this? I mean what am I, a surprise in your life?

S Out of the clear blue sky.

JP God I need a fucking phone book for you.

S A what?

JP I've got more numbers for you.

S Laughter.

JP Newton, Mass: 6

S So you should write 'em in pencil.

JP Uh. They are in pencil man, but, I the erasers wear out.

S Oh aha I'm sorry. The next number is good for six months.

JP This one?

S No.

JP You're moving again?

S Yeah.

JP Where?

S Fifteenth Street between 7th & 8th. I have a sub-let for six months.

JP Far out.

S Yeah it's great, my own place.

JP Yeah um. Very quickly to business. Then I'll speak to you socially.

S Okay.

JP What we did.

S Yeah.

JP A piece.

S A piece?

JP Yeah, you know, an ounce.

S I have, I have a quarter left.

JP You have a quarter with you?

S Yes.

JP Which is? Ah

S The same as the other one. One and a quarter.

JP Okay, I'll take that.

S Uh huh.

JP Can you get an ounce?

S Yeah.

JP Okay.

S I think so.

JP Um, let me do the one. I'll do it tomorrow afternoon.

S I can't get it. Um, I gotta do it from Boston if you want a whole one. The quarter I can.

JP Yeah the quarter I mean.

S The quarter I gotta do like tonight or take it to Boston tomorrow.

JP Well, I'll do it tomorrow. It's done.

S Can you do it tomorrow morning like early?

JP Stuart.

S Up by your office.

JP What's your plans for tomorrow? She has a quarter in New York for one and a quarter. A quarter of an ounce if you want to do more. If Michael wants more. Awright the quarter of an ounce is one and

a quarter. Can we do that in the morning? Well you don't have cash now. We could do it now. We don't have ... I need...

S Alright, that's why I said I'd go to your office in the morning.

JP No, office is no good. I need a scale.

S Oh, it's in, it's in the same thing it was before.

JP Okay, alright.

S You know, the same vial.

JP Ah you know if it isn't, I'm gonna weigh it at Schltz's. If it isn't I'll come beat your face.

S The vial is 9 2/10 and what's in it is seven. You know.

JP Okay I have the money's in my pocket. Come to my office in the morning.

S Okay. Wait a minute, let me get this address. Hold on, I gotta find, oh, here's a piece of paper and a

JP I haven't had this much cash in my hands in -

S Uh, poor as I am. Umh, where's your office?

JP When I get paid. 140 Broadway, you take Lexington subway to the Wall Street stop. Be in the last car of the train.

S Lexington line to Broadway.

JP No Lexington line to Wall Street.

S Wall Street.

JP It's the stop after Fulton Street. It's on the express.

S Uh, huh.

JP Okay. Ah, ah.

S Get off at Wall Street.

JP Get off at Wall Street, last car. Walk upstairs onto Broadway. and you'll see 140 Broadway. Large brown, ah you'll find it. You're smart.

S Okay.

JP Sixteenth. Andresen. Sixteenth floor.

S Sixteenth floor. What's the name?

JP Andresen. A-N-D-R-E-S-E-N.

S Okey doke. Alright I'll see you then about 9:30 or 10:00 o'clock.

JP Oh what am I talking about? Man, I'm sorry I'm very high. I'm

not gonna be there. Can you do it now?

S Yes.

JP Um, okay just. Can you come here?

S Where are you?

JP Thirty-fifth Street and Lexington.

S Thirty-fifth and Lexington?

JP Yeah.

S Wha wha. Give me the address.

JP What's the address? 135 East 35th. 135 East 35th.

S East 35th Street.

JP Right.

S Okey doke.

JP Bring me a

S What's your apartment?

JP It's Steinberg. Yeah. She's gonna come here right now. Apartment 2A, Steinberg, 2R. I'm sorry Steinberg.

S Okey doke.

JP Okay.

S Okay.

JP One flight up.

S Give me about half an hour.

JP Alright, I won't be here.

S Oh?

JP Alright, just leave the vial and Stuart will give you the money.

S Okey doke.

JP Do me a (garbled)

S What?

JP Uh, uh. If I have the extra one I will. Bring me a pack of rolling paper. Urgent.

S Yeah. Okay.

JP But I'll be back. I'm going over to see someone on thirty-fourth Street, then I'm coming back.

S Okay, listen, I may be like a half an hour.

JP So that's cool.

S Okay.

JP Yeah.

S So I'll see you there in a little while.

JP Goodbye.

S Bye, bye.

CONVERSATION TERMINATED - TRANSCRIBED BY SPECIAL AGENT THOMAS WARD

A 97

Reel 2D #13
Date 7/25/73
Time ~~Unmarked~~ 2241
Meter 1209

Incoming call PARKER to Stuart STEINBERG.

JP James PARKER
SS Stuart STEINBERG
S Sam

SS Hello

JP Hi Stuart.

SS Hi Parker

JP What are you doing?

SS Oh, Sam is here. She wants to you. She has a message for you. I'll read it. "Parker, please call me in Boston if you want another O-Z. 'Cause you know it comes from Boston", and then she writes "Love Sammy". And I have a number for her and its in Boston.

JP Right.

SS But all's right here.

JP Oh.

SS So you want to talk to her. Something about something you were gonna do. One more.

JP Uh, Okay. Yes.

SS Well talk to her.

JP Awright let me speak to her.

SS Hold on.

S Talk to me, talk to me.

JP Sit on my face and I'll talk to you.

S (Laughter). Umh. Do you want another ounce?

JP Do you want to sit on my face?

S (Laughter). Parker. Don't talk to me like that over the telephone.

JP Why?

S (Laughter). Because I can't.

JP (inaudible) state violation.

S What?

JP State violation.

S I can't talk to you about those kind of things on the telephone. You know I work for a porno outfit.

JP You work for a porno outfit.

S Right.

JP Okay. uhm. I'm coming over there very quickly. Because I must go over and see somebody. But I'm gonna stop by there.

S I was just on my way out the door. And I was just wondering if you want another ounce.

JP Well I'll talk to the you know.

S Okay.

JP All about it.

S Well hurry up over.

JP Oh yes.

S Please cause there are people waiting for me at my house. Anyhow, I wasn't expecting you.

JP I'm on thirty-fourth amd third.

S Okay.

JP Two minutes away.

S Move your ass.

JP Move my ass.

S Quickly.

JP I ways move my ass.

S Quickly.

JP Yes.

S Okay, Goodbye.

CONVERSATION TERMINATED.

Transcribed by S/A Fredric Boff

A99 (P)

Reel 1P #1
Date 8/8/73
Time
Meter 1353

SS Stuart Steinberg
JP James Parker
F1 Unidentified female
F2 Unidentified female

F1 Andreson

SS Parker, please.

F1 (Inaud) who?

SS Parker, Parker, James Parker (garbled)

F2 Mr. Parker's office.

SS Parker please.

F2 Who's calling?

SS Stuart.

F2 Hold on (SS is talking to someone in the background) SS "called when"? Female answers "tried to call him" SS· "when". Female "last night, all night long. He was not home" SS· I spoke to him yesterday, the day before he's supposed to come here tonight)

JP Important?

SS Yeah.

JP Yes.

SS Well I'm not, are you talkin to Geisenheimer?

JP No, no, I'm trying to, I, I haven't even got to you know I'm, I'm really "high". I haven't gotten it together to,...I'm tryin to make some appointments for somebody to attend a luncheon today.

SS Alright. Irrelevant for a second. I gotta tell you something about the "ludes".

JP Yeah.

SS Alright now, you picked up two hundred from me, right?

JP Right. (garbled) get me another two hundred.

SS I got two hundred for you, I got two for, I got 'em for you.

JP Yeah.

SS Ok, um.. and you'll have the bread for me at least on those two awready today.

A100

JP Um....

SS At least on the two we did. I hope

JP Yeah, yeah, no, no problem.

SS Ok

JP I may, I may have to go up to Fifth Avenue, but I'll get it done.

SS Ok. On the other two, you can pay me when you can.

JP Ok

SS But on these two (garbled) I'll need it.

JP I'll, I'll get ya cash and bring it over tonight.

SS Ok, beautiful.

JP For, one forty.

SS Right. Right.

JP (garbled)

SS Ok, uh what else?

JP Hey Stuart.

SS Yeah .

JP I owe you some money. I don't know how much. We'll have to sit down and figure it out.

SS From what?

JP From the thing with Sam.

SS The thing with Sam? Oh, ok.

JP I, I don't I, ah you know, I, I'm I'm, I can't get the numbers together right now.

SS Alright, well it was thirty one. It was thirty..

JP (garbled) thirty-one?

SS Yeah.

JP Ok fine. I owe you another thirty one bucks.

SS Ok fine, Parker. No problem.

JP Ya know.

SS I'll talk to you later.

JP As broke as I am...

SS That's cool.

JP With my friends I want to keep it even.

SS That's cool man, don't worry. I'll speak to ya later.

JP Alright.

SS Goodbye.

JP And, I, I[illegible] I know you don't need it..but um, that's not the point.

A 101

SS Ok. Whatever.

JP Goodbye.

SS Goodby.

CONVERSATION TERMINATED - TRANSCRIBED BY S/ BARRETT

A 102

USA 33[illegible]
(ED. 4-23-71)

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

2 P6

FPI-MI—2-2-73-10M-8753

Reel 2P #6

Time 1831

Meter 596

Date 8/8/73

Incoming Steve EFFRON to Stuart STEINBERG

SE - Steve Effron

SS - Stuart Steinberg

SS Hello

SE Tell him mad - hi Stue, this is Steven

SS Hi Steven.

SE How are you feeling?

SS I'm fine man.

SE I, we have discuss some crude oil the other day.

SS Yes

SE And what was, what was, they and what did they per?

SS I, I can't get it right now, but Parker will here tonight. He'll talk to him about it he the one

SE By sweetheart

SS He's the man. Bye, bye.

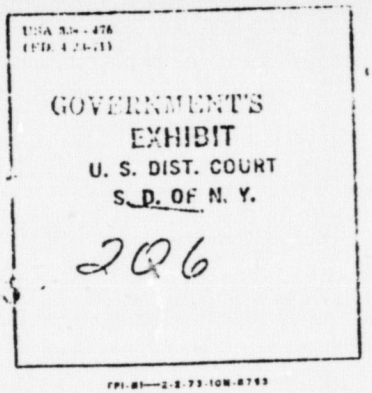
SE (inaudible) Banana's bye.

SS Right.

CONVERSATION TERMINATED

TRANSCRIBED BY SPECIAL AGENT ARTHUR ANDERSON

A103



Reel 2Q #6

Time 1951

Meter 610

Date 8/9/73

Steven to Stuart Steinberg

SS Stuart Steinberg

S Steven

S Stuart?

SS Yes?

S Steven

SS Hi Steven

S Hi.

SS Renada called me; she was really pissed

S Why is she pissed?

SS Because you weren't home.

S Yeah I wasn't home. What can I tell ya?

SS Are you there now? Is she there?

S No, I got hung up in court. I'm in my house in Forest Hills.

SS Okay, she - you in Forest Hills; she was very annoyed that you didn't show.

S Well, that's tough shit.

SS Okay, whatever.

S (inaudible) coming by. I'm suppose to call her in the lobby.

SS Well, well, I, I told her that like you know.

S I can't get I can't tell.

SS Right.

S Judge I have -

SS Okay.

S To meet Renada to get head.

SS Alright, hold on one second. Parker, yeah, I Effron on the other phone so I'm talking to him, but I want to talk to you too. Parker, Effron will you hold for a second? Parker is just tell me how to do something.

S Well, why don't you Parker my number in Queens?

SS Why?

S 459 he wants to talk to me.

SS Parker you want to talk to Effron, no?

S No, okay.

SS Okay Parker, just tell me how to do that type thing and Effron you hold for a second.

S Okay.

SS Yes, yes, yes, yes, yes, yes. Got ya, got ya, got ya, and heat it. I got ya, got ya Parker. Goodbye man. Alright Steve, hi.

S Hi.

SS Hum, what's doing?

S Nothing, I just call to try and tell Renada not to come you know because.

SS Well, she is not here now.

S Okay, well I, I made an effort to call.

SS Monday night another, another party. Monday night here so.

S Oh yeah.

SS Hope you can make it.

S I, I sorry, I ran out on you Stuart. I just got a little up tight.

SS With the cop you mean, well, no problem. I know the cops. There is no problem here.

S Yeah, I know you do, but you know me, I get a little nervous.

SS Yeah, but they're my friends. So, so all, all, all they said was put the stereo down lower.

S I know, but I just get a little paranoid.

SS Well, you should of stayed Steve. It was a good party and we all got it on and it was really nice.

S Yeah, well it was a little heavy for me. I had Sherry there and Honey there and if I, I really can't get it on.

SS Who, who was the chick that you told me that was, was it one of them?

S Yeah, Sherry the one you know.

SS Oh I know Sherry.

S She's outrageous.

SS I've know Sherry all along.

S But she's outrageous.

SS But did you told me, did you know I knew her?

S No, I didn't.

SS She was in my going away party last year.

S Told me she told me she knew you; she used to live near you she said.

SS She went to my going away party last year, Steve.

S Yeah, she is phenomenal.

SS I know.

S She's staying with now she.

SS Sherry sun shine.

S Right, she's staying out here in Forest Hills with me.

SS Is she there with you now?

S She's down stairs getting her nails done.

SS Oh, tell, tell her hi, and tell her to come back Monday night.

S (inaudible) this coming Monday?

SS This Monday night.

S Okay.

SS Okay.

S What time?

SS A anytime after 9.

S Oh because I work night court till 11.

SS Anytime after 9 Steve.

S Okay, I'll come after 11.

SS Please tell Sherry to come too.

S I will.

SS Alright you can bring the other lady too again.

S Okay, far out.

SS Okay.

S Okay, tell Renada I'm sorry but I got hung up in court.

SS Okay, you'll, you'll see Monday night or not else before.

S Well, if you did speak to her.

SS Well, I'm leaving, I'm leaving tonight to go fishing with little Sandy.

S Okay.

SS We're going fishing all day tomorrow and then for the week-end. I'm taking the other Sandy who was here last night. Did you meet her?

S I, I don't remember.

SS Well (inaudible) I'm taking her to Woodstock for the week-end.

S Fire Island? Oh you go to Woodstock?

SS Woodstock for the week-end.

S I'm taking Sun Shine and Honey out to Fire Island.

SS Oh far out. So, Monday night all back at my house again.

S I'll meet ya.

SS Please be there.

S Okay.

SS And bring the ladies again.

S I shall.

SS Fine, because they didn't get into it last night, did they?

S Well no, they got there late and they were out on the Island. They drove in two hours, they were - - - - -

SS Well?

S They walk in and everybody was nude. It was a little up tight for them.

SS Well can they make it Monday you think?

S Yeah.

SS Will they be up to handle it?

A107

S (inaudible) get them there Monday.

SS Okay, please do.

S And we will do a little Chrys on Monday.

SS Well everybody else does you know and whatever.

S Okay.

SS I turned her on to it before.

S Okay.

SS So I left, I left her when, I left her last year. I gave her a couple of angel dust joints which is the same thing.

S That beautiful.

SS Same thing.

S So I guess Parker doesn't want to talk to me, right?

SS Well, why not?

S I don't know. We were suppose to do something, but he never called.

SS Well, I, I just had him on the phone and, and - -

S I know, so I guess he didn't want to do it.

SS Well he did, you told - - you said you didn't want to talk to him.

S I didn't say that I wanted to talk to him. I ask if he wanted to talk to me.

SS Oh, what did want to do hash oil?

S No, he wanted to do with blow with me I thought.

SS Oh! I'll see, I'll call - I give you his number - 734.

S 734

SS 3934

S Okay, thank you.

SS He's home. Call him right now.

S Bye.

SS Bye.

CONVERSATION TERMINATED

TRANSCRIBED BY SPECIAL AGENT ARTHUR ANDERSON

A108

USA 33-478
(Rev. 4-23-71)

GOVERNMENT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

2-05

Reel 2-0 #5
Meter 0139
8/7/73

CI-73-0259

In: SUSAN TO SS

[redacted]

FBI-NY—8-8-73-10M 6783

SS Stuart STEINBERG [redacted]

S Susan [redacted]

(MUSIC IS PLAYED THROUGHOUT [redacted]

TAPE) [redacted]

SS Hello?

S Stuart?

SS Yeah?

S Hi, Susan.

SS Hi Susan.

S How are ya?

SS I'm fine, hon.

S Did you get any sleep last night?

SS Not, not much.

S How do you feel?

SS Fine.

S I worry about you Stuart.

SS I'm fine, fine.

S Ok, fine.

SS Umm, I have some super, super, super smoke. You know anyone who wants it? It's $375.00 a pound - Columbian.

S That's far out 'cause that's what I do with Maurice.

SS Yeah, this is the same thing maybe, I don't know. I'll have it here tonight.

S Yeah. I'd like to taste it.

SS Ok.

S I might be able to do something with it. Is it buds, what?

SS Umm. It's just that it's Columbian and it really, really super. So I don't know. I'll see it when I see it. You know?

S Alright I have a question for you. Priestmann has told me that I can have another thousand 'ludes

SS Yeah?

S And if I take them, then we can do Ephram and a couple of more people.

SS Ok, now, by the way, I charged Parker $70.00.

S You're kidding me!

SS No.

S Dynamite!

SS Alright? So as Parker set $70.00, so there'll be umm $10.00 profit each for us.

S Alright. Well I have some more 'ludes for ya.

SS Ok, fine.

S And so, do you want me to do the other thousand?

SS Sure.

S Alright, then I won't be able to give you the money back as fast, but I'll...

SS Ok.

S ...be able to keep on feeding you 'ludes.

SS Ok, uh, as long as you can get me the money back by the time I leave for uh...for Las Vegas. Which is a week from...

S Oh of course! Of course!

SS ...week from tomorrow.

S No problem there...

SS Ok, sure. Then do that.

S Alright, then I won't come up to you tonight...

SS Ok, ok.

S ...with the money, because the $88.50 I'll use that...

SS Fine.

S ...towards...

SS Ok.

S ...the things.

SS That's fine. Right. That's fine. Good idea.

S Ok, I just wanted to g...use your money and that is why I had to call you and ask you first.

SS Ok, no problem. Beautiful. Ok Susan.

S Ok? Everything else is working out.

SS Everything else is ch...yes is fine.

S I did have one problem.

SS Yeah?

S Uh...one of the kids I sold to last night...

SS Yeah?

...called me at two o'clock in the morning and told me that I missed on the count. It was 28 short. But I called Priestmann this morning...

SS Right.

S I said, Priestman, I said, I have a small problem, nothing major. I said one of my bags was 28 short. He said no problem. I'll make it up. He didn't hassle me.

SS Ok.

S He didn't say "Are you sure you counted right?"

SS Ok. fine.

S Alright.

SS Alright.

S So he's working with me.

SS Ok, that's cool.

S If you know anybody that wants those...uh...tuinals?

SS Ahh...

S Did you know anybody that wants 3 gram Lilly tuinals?

SS Yeah. Shit. I gotta think 'a' who...

S Strauss?...Strauss has no money.

SS He has no money. No, I think it was Eileen White, and she wants 'ludes also.

S I will not deal with her.

SS But I can do it with her.

S If you wanna do tuinals...

SS Well...

S ...with Eileen White...

SS ...easy with her, she wanted o...she wanted thousands.

S ...we can give her thousands of tufnals.

SS (laughs) that's what I figured.

S But I won't call her. You'll have to her.

SS Of course!

S I'll get 'em, and you call her.

SS No problem.

S That's all.

SS Susan...

S Now if you want to call her, I'll give you the prices.

SS Aren't they all the same? Or are they cheaper?

S Well they are three grain Lilly tufnals...

SS Right...

S ...come in sealed poly bags of fifty. Five hundred...

SS Yeah?

S ...and those are the same, those are sixty. To us...

SS Right.

S The generics...

SS What're they?

SS I think those are fifty-five and they come in bottles of a thousand.

SS Fifty-five, how?

S They're not (inaudible) but they're generics. And they're fifty-five to us.

SS Uh huh...

S But he won't break the...

SS What're they? Wha...what are they? They're...s...they're seconals?

S They're 3 gram tufnals...

SS They're the same, but they're...they're...

S ...but they're not Lilies. They're like Rugbe paramount. You know those other combinations (inaudible)

SS Yes, right, right.

S So that's where that's at.

SS Ok.

S I'm sure they'll take fifty-five.

SS Ok, so I'll [illegible]

let's see if you do a thousand...oh...um...how about 75?

S 75 a thousand for the generics?

SS Well for the good ones.

S Yeah, but for the lowest...75?

SS Right. Yeah.

S Seventy-five is high!

SS Is it? What?

S It's $150.00

SS That's...I

S I don't know if she'll go it for you.

SS Alright. What? Seventy. Seventy, we only make mmm...

S 100.

SS ...seventy we make a hundred. Ok, we'll do it that way if you think we could.

S Seventy?

SS Yeah.

S Or we could do it seventy-five and seventy or seventy and sixty-five...

SS Well, I'll, I'll do se...

S Well, whatever, yeah...

SS I'll do seventy and sixty-five...

S Ok, that sounds good.

SS Ok?

S Ok.

SS I'll try and get in touch with her now.

S Fine.

SS Ok.

S Because he'll do with me tonight or anytime.

SS Ok, I'll get back to...are you at work?

S Yeah, I'm at the office.

SS I'll get back to you. Good bye baby.

S Ok, baby, goodbye.

SS Bye.

END OF CONVERSATION FIVE.

TRANSCRIBED BY SPECIAL AGNET BRIAN HOONE

mercy.

These are the unprofessional thoughts I wanted to set forth to the Court prior to decision on the motions, your Honor.

THE COURT: Thank you, Mr. Siegel. Your thoughts are hardly unprofessional and, as has been the case throughout the trial, I found your thoughts and your conduct to be most professional.

I will hear from Mr. Mukasey and then I will rule on the pending motion for a judgment of acquittal, to set aside the jury's verdict or set a new trial.

MR. MUKASEY: I agree with what the Court said. I think what Mr. Siegel said is not unprofessional at all. It is in the highest traditions of the profession. However, I think also that the traditions of the profession require adherence to the rules and that the rules simply do not authorize relief on the basis that Mr. Siegel has argued.

They don't authorize it on the basis that he has argued today and as the government has indicated in its reply papers, they don't authorize it on the basis argued in the motion papers and I respectfully urge therefore that the motion be denied.

THE COURT: I have read the papers. I must say that I had the most trouble with the case as it was presented

against Mr. Parker and my problems with that case were reflected by the fact that the jury came in relatively soon with verdicts relating to the other defendants and, after some deliberation, some hours beyond the others, as I recall it, the jury came in with a verdict and convicted Mr. Parker of the counts which were presented to it.

Although the case against Mr. Parker cannot be characterized as the strongest case one could imagine, there was, in this Court's view, a prima facie case and in this Court's view, again, far from being prejudiced, in my judgment, by his being linked with the other defendants here, I think there was a reverse element here which was beneficial to the defendant and caused the jury to deliberate for such a long time regarding his fate.

Of the four defendants who went on trial, in the Court's view he was the least culpable. The Court's views will be reflected if, as and when I reach the point this afternoon that I impose sentence but I have reluctantly concluded that, number one, the government made out a prima facie case; number two, I must reject, as I view the case, the argument that there were multiple conspiracies here.

I have reached the conclusion that there was a single, overall conspiracy with different actors and different drugs and I recall that Mr. Parker himself relayed messages

which I would consider in furtherance of the conspiracy as to at least one drug other than hash oil, in which he dealt directly.

I view the goal of the conspiracy charged here as the distribution of a variety of drugs. I view the evidence here as reflecting Mr. Parker's awareness of the fact that other persons were involved here and I also find that he was active, although certainly to a far lesser degree than, for example, Mr. Steinberg and though I must suggest that I am sympathetic, I feel that there was a case made out here; that there is and was a single conspiracy and that a severance here would not have been appropriate.

I suggest the Court must take notice of the fact that the jury focused clearly on Mr. Parker when they came to deliberate upon him; that they came back to listen at least three and perhaps four times to just a few of the mass of conversations. I feel that they did focus on at least two of the conversations which contained his own voice before convicting him and, as I have indicated, I would suggest that Parker was helped rather than prejudiced by the contrast between, again, for example, Mr. Steinberg and himself.

All these points which I have mentioned were pointed out by counsel in their respective summations, were presented to the jury and I have concluded that the jury

jb-5

verdict was properly arrived at, is supported by the evidence and must stand.

Accordingly, the defendant's motion for judgment of acquittal, setting aside the verdict of the jury or, alternatively, for a new trial, is denied.

MR. SIEGEL: Your Honor, at this time may I hand up to your Honor two additional letters with regard to the defendant James Parker?

THE COURT: Certainly. I should like to take a moment to look at the two letters and then I will hear counsel.

(Pause.)

THE COURT: I have read the two letters which have been handed up. For the record, one is from Dr. Nathan Borrell and the second from Miss Lynne Fina, the defendant's former wife.

At this time I am proceeding to the matter of sentence and I would note that Mr. Parker is here before the Court together with his counsel, Mr. Siegel.

Mr. Siegel, is there any reason why sentence should not be imposed at this time?

MR. SIEGEL: No, your Honor.

THE COURT: Mr. Parker, is there any reason why sentence should not be imposed at this time; any reason you know of?

U.S. v. Sterbens - Siegel

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK,
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 17 day of May, 1975 at No. U.S. Courthouse, E.D.N.Y. deponent served the within Appendix upon U.S. Attorney the Appellee herein, by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me,
this 19 day of May 1975

Edward Bailey

William Bailey

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1973